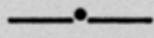


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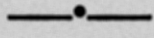
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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED
Com. Sub. for Com. Sub. for
SENATE BILL NO. 196

(By Mr. Tonkovich, Mr. President, et al.)



PASSED April 13, 1985
In Effect July 1, 1985 ~~Passage~~



ENROLLED

FINANCE

COMMITTEE SUBSTITUTE

FOR

SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 196

(BY MR. TONKOVICH, MR. PRESIDENT, MR. BOETTNER, MR. R. WILLIAMS,
MR. TOMBLIN, MR. ASH, MR. CHERNENKO, MR. KARRAS, MR. WHITLOW,
MR. CHAFIN, MR. SHARPE, MR. PARKER, MR. JARRELL, MR. TUCKER AND
MR. B. WILLIAMS)

(Originating in the Committee on Finance.)

[Passed April ~~18~~¹⁶, 1985; to take effect July 1, 1985.]

AN ACT to repeal section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nineteen, article one and all of article four, chapter twenty of said code; to repeal article one-c, chapter twenty-one of said code; and to repeal article seven, chapter twenty-six of said code; to amend said code by adding thereto three new chapters, designated chapters five-b, five-c, and five-d; to amend chapter twelve of said code by adding thereto a new article, designated article one-a; to amend chapter nineteen of said

code by adding thereto a new article, designated article one-a; to amend and reenact sections nine and fourteen, article one of chapter twenty, and to amend and reenact section one, article seven of said chapter twenty; to amend and reenact sections six, nine and twenty-one, article fifteen, chapter thirty-one of said code, and to further amend article fifteen of said chapter thirty-one by adding thereto sixteen new sections, designated sections seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-l, seven-m, seven-n, seven-o, seven-p and seven-q, all relating to economic development generally; establishing "The Economic Development Act of 1985"; setting forth legislative findings; construction of chapter; creating the department of commerce; providing for a commissioner of commerce, division directors and deputy commissioners; setting forth general powers of the department; creating the various divisions within said department; authorizing the commissioner to establish additional divisions; authorizing the governor to transfer divisions, duties, functions and appropriations between the department of commerce and the office of community and industrial development; providing for an expiration date of such authority; assigning or transferring certain employees to the department of commerce or the office of community and industrial development; protecting the employment, employment classification and other employment conditions of certain persons; providing for exceptions; requiring the department to submit an annual program and policy action statement to the joint committee on government and finance; providing for the division of tourism; and setting forth its purpose, powers and general duties; providing for the division of advertising and promotion, and setting forth its purpose, powers and general duties; providing for the division of research and strategic planning, and setting forth its purpose, powers and general duties; providing for the division of product marketing, and setting forth its purpose, powers and general duties; providing for the division of small business development, and setting forth its purpose, powers and general duties; establishing small business innovation centers; creating the state small business innovation network center board; setting forth the functions and duties of regional small

business innovation centers; confidentiality of certain information; mandating the director to adopt certain rules and regulations; transferring the duties, powers, functions and all documents and equipment of the division of parks and recreation within the department of natural resources to the department of commerce; retaining legal title to such properties within the department of natural resources; transferring existing contractual obligations and remaining appropriations to the department of commerce; requiring the commissioner of commerce and the director of natural resources to cooperate in effectuating such transfer; providing for the division of parks and recreation, and setting forth its purpose, powers and general duties; law enforcement duties to remain the responsibility and function of the department of natural resources; continuing the Berkeley Springs sanitarium as a state recreational facility within the department of commerce; transferring the Washington Carver camp to the jurisdiction of the commissioner of commerce; requirements of commissioner; providing definitions; providing for the issuance of park development revenue bonds; duties and authority of commissioner; authorizing the commissioner to promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to control uses of the parks and recreation system; prohibiting public hunting, the exploitation of minerals or harvesting of timber for commercial purposes in any state park; preserving the authority of the director of the department of natural resources with respect to public lands; limitations on expenditure of revenues; authorizing the commissioner to issue park development revenue bonds and setting forth other powers of the commissioner; exempting park development projects, certain properties and income from taxation, except inheritance taxation; providing for the investment in notes, bonds and security interests; disclaimer of state liability; providing for a trustee for bondholders; proceeds of park development revenue bonds, grants and gifts; authorizing the commissioner to pledge revenue as security for any bonds issued; setting forth duties of the department with respect to the maintenance and control of projects; requiring observation of the constitution and other laws; authorizing the commissioner to operate

commissaries, restaurants and other facilities; authorizing the commissioner to enter into certain contracts; providing for the acquisition, development, protection, operation and maintenance of the Greenbrier river trail; providing certain limitations thereof; requiring the correlation of projects and services; sunset provision; abolishing the office of economic and community development; mandating the governor to transfer the functions, personnel, property and relative liens thereto, from said office to the office of community and industrial development or to the department of commerce; existing contracts to remain in full force and effect; creating the office of community and industrial development; providing for a director thereof; authorizing the director to promulgate rules and regulations; exempting such rules and regulations from the provisions of chapter twenty-nine-a; creating divisions within said office; authorizing the governor to transfer duties, functions or appropriations to the department of commerce; authorizing the governor, at the director's request, to create additional or abolish existing divisions; providing for a limit on such gubernatorial authority; requiring the office to conduct certain feasibility studies and report to the Legislature; defining certain terms; providing for the West Virginia export development authority; setting forth legislative findings; definitions; creating the said authority and setting forth its purpose; providing for a board of directors; qualifications and duties of board members; setting forth general powers of the authority; empowering the authority to provide guaranteed funding for eligible export loans; setting forth qualifications for such loans; providing for participating banking organizations and setting forth qualifications thereof; requiring the submission of an annual report and an annual audit; interpretation of powers; exempting authority from taxation; setting forth when conflict of interest exists with respect to members, officers, agents or employees of the authority; consequences of any such conflicts; exempting members or any persons acting on behalf of the authority from personal liability; authorizing the authority to issue bonds; such bonds to be payable solely from revenues; providing for the execution, form, delivery, conditions and sale of such bonds; exempting such bonds from certain taxation; exempting security agreements and

financing agreements from stamp and transfer taxes; authorizing the authority to create an insurance fund; setting forth requirements of such funds; permitting the authority to use bond funds to purchase such insurance; when insurance may be pledged as security; providing that bonds, debenture, notes or other evidence of indebtedness of the authority are securities which may be invested or deposited by the appropriate persons or entities; exempting certain confidential information from disclosure; provisions to be cumulative; severability; of provisions; continuing the West Virginia labor-management advisory council; renaming said council; increasing the membership of said council; present members to complete terms of office; providing that additional organizations should submit recommendations for membership to the governor; increasing the minimum number of meetings each year and the number of members constituting a quorum; setting forth objectives of the council; enumerating the powers, duties and functions thereof; requiring the council to submit an annual report to the joint committee on government and finance; setting forth authorizations and restrictions with respect to appropriations, gifts, bequests or grants; funds to be deposited with state treasurer; requiring the council to designate regions and to establish regional advisory councils therein; setting forth duties and requirements of such councils; providing for the compensation of members and employment of staff; duration of council; creating the "West Virginia Basic Assistance for Industry and Trade Act"; setting forth legislative purpose and intent; definitions; severability; creating the West Virginia automobile industry assistance corporation; powers and duties generally; providing for a board of directors of such corporation; setting forth qualifications and duties of the board; requiring the board to manage and control the corporation; exempting directors and officers from personal liability; authorizing the board to employ certain persons; restricting the salary of employees; requiring all contracts of employment to contain prevailing rate of wages; how prevailing rate of wages determined; specifying powers of the corporation; authorizing the governor to provide for the transfer of the use, possession and control of real or personal property of the state to the corporation; providing for a

principal office; requiring the maintenance of records; requiring board members to take oath of office; providing that the board of investments shall be ex officio a board of investments for public employees retirement system funds for purposes of article; authorizing the board of investments to invest moneys, securities and other assets of such system in the form of interest bearing loans; setting forth restrictions on such loan authority; specifying requirements of such loans; setting forth limitation on loan authority; specifying terms and conditions of loans; requiring an annual audit of a borrower's account; authorizing the board to request a report of an independent audit; prohibiting the making of loans without a written agreement of the borrower to provide the board with such reports; authorizing the board to take necessary action to enforce rights; providing certain tax credits to borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such reports; providing a termination date for the board's authority to make such loans; creating the West Virginia industrial and trade jobs development corporation; definitions; purposes of corporation; providing for a board of directors; number, appointment, terms of office, qualifications and compensation of members; prohibiting members from having certain financial interests; providing for criminal penalties; specifying the duties of the board; exempting corporate directors and officers from personal liability; authorizing the board to employ staff personnel; limitation on salaries; requiring all contracts to contain minimum wage provisions; determination of minimum wage; specifying the powers of such corporation; creating an investment fund; providing how such fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest in qualified securities; setting forth requirements for such investment; limiting the amount of total investment; exceptions; exempting such transactions from the provisions of the uniform securities act; authorizing the corporation to finance development projects; setting forth restrictions on such financing; limiting the amount of financing; exceptions; requiring security for such investments; exempting such transactions from the

provisions of the uniform securities act; authorizing the governor to transfer to the corporation the use, possession and control of real or personal property of the state; providing the location of a principal office; maintaining records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio a board of investments for public employees retirement system funds for investment in accordance with the provisions of this article; setting forth the authority of the board of investments to invest moneys; requirements of loans limitations on such loan authority; setting forth terms and conditions of loans; authorizing the board of investments to take necessary action to enforce certain rights; permitting a tax credit for borrowers; limitations thereof; requiring the board of investments to make an annual report to the legislature; setting forth requirements of such report; providing for the termination of the board's authority to make such loans; authorizing certain inspections, audits and investigations; creating the public energy authority; providing for a short title; setting forth purposes and intent; legislative findings; definitions; creating the West Virginia public energy authority board; providing for the appointment, terms of office, qualifications, compensation, duties and expenses of board members; providing for a director; requiring the board to report annually to the governor and the Legislature; audit; setting forth powers of the authority; providing for general powers, duties, authority and responsibilities of authority; expenses of authority; restrictions on use of funds; authorizing the board to invest funds in specified securities; providing for the maintenance, operation and repair of projects; providing that bonds shall be lawful investments; exempting the operation and maintenance of projects from taxation; empowering the authority to acquire property; authorizing other governmental agencies to lease, lend, grant or convey property to the authority; setting forth terms thereof; authorizing the authority to acquire property or property rights of other property owners; authorizing governmental agencies to lease, lend, grant or convey property to the authority; authority not to be deemed a public utility; authority exempted from jurisdiction of the public service commission; authority subject to provisions

governing gas pipeline safety; providing for the transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers; prohibiting officers, members or employees of the authority from having financial interests; exceptions; criminal penalty; exempting directors or other persons acting on behalf of the authority from personal liability; requiring meetings and records of authority to be public; exceptions; liberal construction to be given; severability; creating a linked deposit program; definitions; legislative findings; limitations on investments in linked deposits; applications for loan priority; loan package to be submitted to state treasurer; authorizing the state treasurer to accept or reject such loan package; requiring a deposit agreement between the lending institution and state treasurer; specifications of the deposit agreement; providing for the loan rate; certification of compliance; monitoring of compliance by the state treasurer; setting forth duties of the state treasurer and the industrial development authority; requiring the state treasurer to report quarterly to the governor and the joint committee on government and finance; contents of reports; exempting the state and the state treasurer from liability; division of forestry; legislative findings; purposes; transferring the division of forestry from the department of natural resources to the department of agriculture; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account; additional duties of director; creating a forestry commission; qualifications and appointment of director; powers and duties generally; providing for the fiscal management of the department of natural resources; removing the requirements that the director of natural resources establish and maintain bookkeeping and internal auditing systems for all state parks; removing specifications thereof; setting forth divisions within the department of natural resources; removing the division of parks and recreation as a division within said department; authorizing the chief conservation officer of the department of natural resources to supervise and direct the department's law-enforcement policies, practices and programs; duties and authorities of such chief conservation officer; providing for other conservation

officers, including emergency conservation officers; selection of such officers; authorizing the chief conservation officer to select and appoint full-time civil service employees as special conservation officers; removing requirement that such officers be chosen from among employees of the department of natural resources; setting forth powers and duties of special conservation officers; limitation on jurisdiction; specifying other authorities and jurisdiction of the chief conservation officer; setting forth the general powers of the economic development authority; providing the authority with additional power to issue bonds, at the request of the governor or an appropriate state agency or authority, for the construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, or for export development, farm development, jobs development or forest development, or for the West Virginia automobile assistance corporation or the West Virginia industrial and trade jobs development corporation; requiring that any such bonds issued for the construction of electrical power generating facilities, natural gas transmission lines or other energy projects be first approved by an act of general law, after public notice and hearing; loans for construction of facilities and projects; issuance of bonds and notes; trustee for bondholders; contents of trust agreement; relating to bonds issued; use of funds by authority; restrictions; relating to certain projects; security for bonds and notes issued; enforcement of payment and validity of bonds and notes issued; pledges; time; liens; recordation; refunding; bond; purchase and cancellation of notes or bonds; vested rights; impairment; providing that bonds shall not be debts; expenses; negotiability of bonds and notes; legal investments; exemption from taxation; exemption from personal liability; cumulative authority; applicability of other statutes and charters; authorizing the authority to make equipment loans; qualifications of such loans; permitting the authority to make such loans based on an unconditional letter of credit; real estate as a security interest; permitting the authority to determine the necessity, terms and amount of additional security; and increasing the economic development authority's authorized limit on borrowing and the board of investment's authorized limit on investments.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one, and all of article four, chapter twenty of said code be repealed; that article one-c, chapter twenty-one of said code be repealed; and that article seven, chapter twenty-six of said code be repealed; that said code be amended by adding thereto three new chapters, designated chapters five-b, five-c and five-d; that chapter twelve of said code be amended by adding thereto a new article, designated article one-a; that chapter nineteen of said code be amended by adding thereto a new article, designated article one-a; that sections nine and fourteen, article one and section one, article seven, all of chapter twenty be amended and reenacted; that sections six, nine and twenty-one, article fifteen of chapter thirty-one be amended and reenacted, and that said article fifteen of chapter thirty-one be further amended by adding thereto sixteen new sections, designated section seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-l, seven-m, seven-n, seven-o, seven-p and seven-q, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1. Short title.

- 1 This chapter shall be known and may be cited as "The
- 2 Economic Development Act of 1985."

§5B-1-2. Legislative findings.

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding:
- 3 (a) That seriously high unemployment exists in many
- 4 areas of the state;
- 5 (b) That economic insecurity due to unemployment
- 6 undermines the health, safety and general welfare of the
- 7 people of the entire state;
- 8 (c) That the absence of employment and business
- 9 opportunities for youth is a serious threat and has resulted
- 10 in families leaving the state to find opportunities elsewhere,
- 11 adversely affecting the tax base of the state, counties and
- 12 municipalities;

13 (d) That the present and future welfare of the people of
14 the state require as a public purpose a renewed effort
15 toward the promotion and development of business
16 enterprises with potential to help;

17 (e) That the legislative and executive branches of state
18 government must seek out and recruit exceptionally
19 qualified individuals and organizations to administer,
20 advise and manage the state's economic development
21 programs;

22 (f) That the state's leaders of business, labor, education
23 and government must cooperate and advance together on
24 common ground, with the common purpose of the economic
25 revitalization of our state; and

26 (g) That the industrial products and natural resources
27 of the state need to be more thoroughly managed, developed
28 and promoted and the various industries better coordinated
29 and developed to provide a healthy industry environment
30 that will decrease unemployment, promote the use of, while
31 also protecting the renewable natural resources of West
32 Virginia, and otherwise provide for the economic
33 revitalization of our state.

34 In recognition of these findings, it is in the best interest of
35 the citizens of this state to transfer the management and
36 responsibility of the division of parks and recreation to the
37 department of commerce and to unite the management and
38 responsibility for renewable forest resources by
39 transferring the division of forestry from the department of
40 natural resources to the department of agriculture. These
41 transfers of divisions' management and responsibility will
42 unite and realign the various governmental activities in the
43 areas of commercial, industrial, recreational and forestry
44 management and development so as to promote the
45 expansion of industry and the use of renewable forestry
46 resources and enhance the development of nonrenewable
47 resources to assure the greatest benefits to the people of
48 West Virginia.

§5B-1-3. Construction of chapter.

1 The provisions of this chapter being remedial in nature
2 and designed for the benefit and well being of the people of
3 the state, such provisions shall be given a liberal
4 construction to ensure the fulfillment of the purposes and
5 intent of this chapter.

§5B-1-4. Department created; appointment, compensation and qualifications of commissioner.

1 Effective the first day of July, one thousand nine hundred
2 eighty-five, there is hereby created in the executive branch
3 of state government a department of commerce and the
4 office of commissioner of commerce. The commissioner
5 shall be the chief executive officer of the department with
6 control and supervision of its operations and shall be
7 appointed by the governor with the advice and consent of
8 the senate and shall be paid a salary of sixty-five thousand
9 dollars a year. The commissioner of commerce shall have
10 control and supervision of the department of commerce and
11 shall be responsible for the work of each of its divisions.
12 Under the control and supervision of the commissioner of
13 commerce, each division director shall be responsible for
14 the work of his division. The commissioner of commerce
15 shall have the authority to employ such assistants as may be
16 necessary for the efficient operation of the department.

17 The commissioner may appoint such deputy
18 commissioners and assign them such duties as may be
19 necessary for the efficient management and operation of the
20 department.

§5B-1-5. General powers of the department.

1 (a) The department of commerce shall have the
2 authority and the duty to:

3 (1) Promote, encourage and facilitate the expansion and
4 development of markets for West Virginia products and
5 services and the state's national and international image
6 and prestige by any and all reasonable methods;

7 (2) Promote and encourage the location and
8 development of new business in the state and the
9 maintenance and expansion of existing business;

10 (3) Investigate and study conditions affecting West
11 Virginia business, industry and commerce; collect and
12 disseminate information, and engage in technical studies,
13 scientific investigations, statistical research and
14 educational activities necessary or useful for the proper
15 execution of the powers and duties of the department;

16 (4) Plan and develop an effective economic information
17 service that will directly assist business, education and

18 labor and also encourage businesses outside the state to use
19 industrial office facilities, professional, labor, financial and
20 recreational facilities, services and products from within
21 the state;

22 (5) Encourage and develop commerce with other states
23 and nations and devise methods of removing trade barriers
24 that hamper the free flow of commerce between this and
25 other states and nations and for these purposes cooperate
26 with governmental, quasi-public and private organizations
27 in formulating and promoting the adoption of compacts and
28 agreements helpful to commerce and labor;

29 (6) Conduct or encourage research designed to further
30 new and more extensive uses of the natural, human,
31 professional, technical and other resources of the state with
32 a view to the development of new products, industrial
33 processes, services and markets;

34 (7) Compile periodically a census of business and
35 industry in the state, in cooperation with other agencies,
36 and analyze and publish the information in such form as to
37 be most valuable to business and industry;

38 (8) Compile periodically a census of the crafts, trades,
39 skills and occupations of all adult persons in the state, in
40 cooperation with other agencies, and analyze and publish
41 the information in such form as to be most valuable to
42 business and industry;

43 (9) Study long-range trends and developments in the
44 industries, commerce and economic health of the state, and
45 analyze the reasons underlying such trends; study costs and
46 other factors affecting successful operation and location of
47 businesses within the state;

48 (10) Advertise and publicize the material, economic
49 quality of life, recreational and other advantages of the
50 state which render it a desirable place for commerce and
51 residence;

52 (11) Collect, compile and distribute information and
53 literature concerning the advantages and attractions of the
54 state, its historic and scenic points of interest and the
55 highway, transportation and other facilities of the state;

56 (12) Plan and carry out a program of information and
57 publicity designed to attract to West Virginia tourists,
58 visitors and other interested persons from outside the state;

59 (13) Initiate, promote and conduct, or cause to be

60 conducted, research designed to further new and more
61 extensive uses and consumption of natural and other
62 resources and their by-products; and for such purposes, to
63 enter into contracts and agreements with research
64 laboratories maintained by educational or endowed
65 institutions in this state;

66 (14) Manage the state's park and recreation system for
67 the benefit of the people of this state, and effectively
68 promote and advertise the same to increase public
69 knowledge and use thereof;

70 (15) Make recommendations to the governor and the
71 Legislature of any legislation deemed necessary to facilitate
72 the carrying out of any of the foregoing powers and duties,
73 and to exercise any other power that may be necessary or
74 proper for the orderly conduct of the business of the
75 department and the effective discharge of the duties of the
76 department; and

77 (16) To cooperate and assist in the production of motion
78 pictures and television and other communications.

**§5B-1-6. Divisions created; continuation of civil service
coverage for persons employed in the former office
of economic and community development and the
department of natural resources.**

1 There is hereby created within the department of
2 commerce:

3 (1) The division of tourism;

4 (2) The division of advertising and promotion;

5 (3) The division of research and strategic planning;

6 (4) The division of product marketing;

7 (5) The division of small business development; and

8 (6) The division of parks and recreation.

9 Each said division shall be under the control of a director
10 to be appointed by the commissioner who shall be qualified
11 by reason of exceptional training and experience in the field
12 of activities of his respective division and shall serve at the
13 will and pleasure of the commissioner. The commissioner
14 shall have authority to establish such additional divisions
15 as may be determined necessary to carry out the purposes of
16 this chapter.

17 The governor may, by executive order, transfer any of the
18 divisions, duties, functions or appropriations of the

19 department of commerce to the office of community and
20 industrial development created by article two of this
21 chapter; and, he may, by executive order, transfer any of the
22 divisions, duties, functions or appropriations of the office of
23 community and industrial development to the department
24 of commerce, as he, from time to time, deems necessary to
25 carry out the purposes of this chapter. The authority to
26 make such transfers, as provided by this section, shall
27 expire on January first, one thousand nine hundred eighty-
28 six.

29 All persons employed on the effective date of this chapter
30 in the governor's office of economic and community
31 development and the division of parks and recreation in the
32 department of natural resources, the duties and functions of
33 which have been transferred either to the department of
34 commerce or the office of community and industrial
35 development created by virtue of the provisions of the
36 economic development act of one thousand nine hundred
37 eighty-five, are hereby assigned and transferred to either
38 the department of commerce or the office of community and
39 industrial development, as the case may be, and no person's
40 employment shall be eliminated, nor shall any person's
41 salary, benefits or position classification be reduced or
42 diminished by reason of the provisions of this chapter. All
43 persons affected shall retain their coverage under the civil
44 service system and all matters relating to job classification,
45 job tenure, salary and conditions of employment shall
46 remain in force and effect from and after the effective date
47 of this chapter: *Provided*, That nothing herein shall
48 prohibit the disciplining or dismissal of any employee for
49 cause, or the dismissal of any nonclassified supervising
50 employees appointed by the governor and serving at the will
51 and pleasure of the governor.

**§5B-1-6a. Program and policy action statement; submission to
joint committee on government and finance.**

1 The department of commerce shall prepare and submit to
2 the joint committee on government and finance on/or
3 before the first day of December, one thousand nine
4 hundred eighty-five, and each year thereafter, a program
5 and policy action statement which shall outline in specific
6 detail according to the purpose, powers and duties of the

7 office or division, its procedure, plan and program to be
8 used in accomplishing its goals and duties as required under
9 this article.

10 The joint committee on government and finance shall
11 prescribe the content and the form of such statements
12 required under this section.

§5B-1-7. Division of tourism; purpose; powers and duties generally.

1 It shall be the duty of the division of tourism:

2 (a) To promote and enhance the tourist industry and
3 improve tourist facilities and attractions;

4 (b) To compile a listing of all tourist facilities in this
5 state, whether public or private, including, but not limited
6 to, state parks and forests, camping grounds, back-packing
7 and hiking trails, public and private hunting areas
8 (including the game or fowl indigenous thereto) fishing
9 lakes, ponds, rivers and streams (including the type of fish
10 indigenous thereto; and the dates of the stocking thereof),
11 ski resorts and areas, ice skating rinks or facilities, rifle and
12 pistol target practice areas, skeet and other shooting
13 facilities, archery ranges, swimming pools, lakes, ponds,
14 rivers and streams, hotels, motels, resorts and lodges
15 (including any attendant restaurant, banquet, meeting or
16 convention facilities or services) health spas or mineral
17 water or spring water health facilities, museums, cultural
18 centers, live-performance theaters, colleges, schools,
19 universities, technical centers, airports, railroad stations,
20 bus stations, river docks, boating areas, government or
21 military installations (which are not restricted to public
22 access), historical places, markers or places of events,
23 birthplaces of famous West Virginians, or any other thing of
24 like kind and nature, and to develop relative thereto a series
25 of films, videotapes, pamphlets, brochures, and other
26 advertising or promotional media, and to distribute the
27 same in such a manner as to enhance the public's knowledge
28 about West Virginia and its many attractions;

29 (c) Develop a plan for tourist facility expansion and new
30 development, including financing;

31 (d) To develop a system, means and mechanism to
32 distribute the promotional media described in subdivision
33 (a) of this section, both nationally and internationally; and

34 to make the same available to travel agents, tour groups,
35 senior citizen organizations, airlines, railroads, bus
36 companies, newspapers, magazines, radio and television
37 stations, and the travel editors thereof; to develop, in
38 cooperation with the department of highways, a series of
39 information stations along interstate and other major
40 highways of this state, utilizing existing rest stop areas and
41 other areas at or near the main points of egress and ingress
42 of this state for the purpose of making said information
43 available to the public at large;

44 (e) To develop and implement a marketing strategy,
45 employing radio, television, magazine and newspaper
46 advertising, or any combination thereof, in those major
47 metropolitan areas of the nation, in order to attract the
48 residents thereof to visit and enjoy the tourists facilities of
49 this state;

50 (f) To encourage, cooperate with, and participate in, any
51 group or organization, including regional travel councils,
52 the purpose of which is to promote and advertise, or
53 encourage the use of, tourist facilities in West Virginia;

54 (g) To provide professional assistance, technical advice
55 or marketing strategies to any privately owned facility or
56 attraction, as described in subdivision (a) of this section,
57 which is open and available to the general public, which has
58 developed or is attempting to develop its own advertising
59 program;

60 (h) To employ, train and supervise a corps of
61 information specialists or tour guides who possess, or
62 through their employment and training will possess,
63 specific knowledge and information about the historic,
64 scenic, cultural, industrial, educational, governmental,
65 recreational and geographical significance of the state and
66 the various facilities or attractions described in subdivision
67 (a) of this section. In hiring the information specialists
68 herein provided, special preference shall be given to senior
69 citizens (those over sixty-two years of age) and college
70 students who are bona fide residents of the state and
71 enrolled in any college or university of this state, whether
72 public or private, all of whom shall be hired on a part-time
73 basis and whose periods of employment may be seasonable;

74 (i) To provide to any tour group, travel agency, public
75 carrier or other entity of like kind or nature, who is or which

76 is offering tours, visits or vacations in West Virginia the
77 services of the information specialists provided for in
78 subdivision (f) of this section, without cost or fee to said
79 entity requesting said service;

80 (j) To assist tour groups, travel agencies, public carriers
81 or other entities of like kind or nature in developing a
82 program of pre-planned tours, visits or vacations in West
83 Virginia; and, in conjunction therewith, to coordinate the
84 activities of said tour groups, travel agencies, public
85 carriers or other entities with the services offered by any of
86 the facilities set forth in subdivision (a) of this section; and
87 to encourage said facilities to offer special or discount rates
88 to any party traveling with said tour groups, travel
89 agencies, public carriers or other entities of like kind or
90 nature; and

91 (k) To cooperate with the department of highways, in
92 developing a system of informational highway signing
93 relating to the recreational, scenic, historic and
94 transportation facilities and attractions of the state that
95 comply with the current federal and state regulations as
96 related to outdoor advertising and signing as required by
97 the Manual of Uniform Traffic Control Devices.

**§5B-1-8. Division of advertising and promotion; purpose;
powers and duties generally.**

1 It shall be the duty of the division of advertising and
2 promotion:

3 (a) Based upon the information, statistics, facts, studies
4 and conclusion produced by or for the division of strategic
5 planning, to develop a program of advertising strategies
6 and plans to inform the public at large and specific target
7 groups about various aspects of the state of West Virginia,
8 including, but not limited to, agriculture, natural resources,
9 timber and timber byproducts, coal, oil, gas and their
10 byproducts, existing industries and existing and proposed
11 industrial sites, educational, research and technical
12 institutions, the labor force, transportation, public utilities,
13 navigable waterways, rivers, lakes and streams, taxation,
14 revenue bonding availability and assistance, governmental
15 rules and regulations relative to business and industry, and
16 any other fact, statistic or item of information which is or
17 may be helpful to or of interest to any corporation,

18 partnership, association, individual or individuals who or
19 which is or may be interested in engaging in business in the
20 state of West Virginia;

21 (b) To develop such films, videotapes, computer
22 software, phonograph records, tape recordings, pamphlets,
23 brochures, booklets, information sheets, radio, television or
24 newspaper advertising, magazine inserts, advertisements
25 or supplements, billboards or any other thing of like kind or
26 nature which is, or may be, likely to inform the public at
27 large or any specifically targeted group or industry about
28 the benefits of living in, investing in, producing in, buying
29 from, contracting with, or in any other way related to, the
30 state of West Virginia or any business, industry, agency,
31 institution or other entity therein;

32 (c) To employ or contract with such professional or
33 technical experts or consultants as may be necessary to
34 create and produce the items set forth in subdivision (b) of
35 this section;

36 (d) To spend such sums of money as may be necessary,
37 within legislative appropriation therefor, to purchase
38 advertising time or space in or upon any medium generally
39 engaged or employed for said purpose to distribute or
40 disseminate the items of advertising described in
41 subdivision (b) of this section;

42 (e) To provide professional assistance, technical advice
43 or marketing strategies to any privately owned business or
44 industry in this state which has developed or is attempting
45 to develop its own advertising program;

46 (f) To cooperate with, or participate in, any group or
47 organization, whether public or private, the purpose of
48 which is to promote, enhance or develop a positive image of
49 the state of West Virginia or any business, industry,
50 institution or facility therein;

51 (g) To use such resources as are available to it to
52 distribute the items of advertising and promotion described
53 in subdivision (b) of this section, to such group or groups,
54 audience or audiences, corporations, partnerships,
55 associations, including public and private colleges and
56 universities, and to individuals, who or which are, or may
57 be, interested in some aspect of the state of West Virginia;

58 (h) To engage in, participate in, promote or sponsor,
59 such trade shows, fairs, information seminars or

60 symposiums, or other event or events of like kind and
61 nature, including privately funded trade shows, fairs,
62 information seminars or symposiums, or other event or
63 events of like kind and nature, whether located within or
64 without this state, or beyond the borders of the United
65 States, to promote generally the state of West Virginia or to
66 assist any business, industry or other entity, whether public
67 or private, in promoting, advertising or advancing the
68 reputation of the state of West Virginia or any corporation,
69 association, partnership, institution, business, industry or
70 other entity which is, or may be, likely to produce
71 additional employment or employment opportunities,
72 business or business opportunities in the state of West
73 Virginia; and

74 (i) To perform such other duties or functions, or to
75 engage in such other activities, as the commissioner may
76 from time to time direct.

**§5B-1-9. Division of research and strategic planning; purpose;
powers and duties generally.**

1 (a) The division of research and strategic planning shall
2 have the following powers and duties with respect to
3 research:

4 (1) To establish, in cooperation with the appropriate
5 college or colleges, school or schools, of West Virginia
6 University, a center for economic analysis and statistics.
7 The center shall be under the control and supervision of a
8 director, who shall be appointed by the president of West
9 Virginia University. The center shall employ such staff
10 economists or statisticians, such research assistants and
11 secretaries, each of whom shall serve on a part-time basis
12 and may be members of the faculty or staff of West Virginia
13 University. In addition, the center may employ student
14 interns.

15 (2) The center shall provide the commissioner of
16 commerce, the director of the division of strategic planning,
17 and the Legislature, with an analysis of the quality of
18 economic data pertaining to West Virginia. The center shall
19 recommend ways to obtain additional information
20 necessary to better understand the state's economy and to
21 devise better economic development strategies. The center
22 shall publish results of its research, maintain a

23 comprehensive library with supporting computer data
24 bases and shall, upon request, provide a review of the
25 economy and major policy issues to the joint committee on
26 government and finance.

27 (3) During its first year of operation, the center shall
28 include in its research topics the desirability of establishing
29 a detailed gross state product series, modeled after the
30 national income and products accounts and the desirability
31 of constructing a periodic input/output table for the state. It
32 shall review the quality of current statistics relating to
33 employment and prices and statistics relating to poverty
34 and the distribution of income and wealth. The center may
35 study the feasibility of, and based upon such study
36 establish, a West Virginia econometric model project.

37 (4) Where deficiencies are found in existing data
38 sources, the center shall publish conclusions regarding the
39 benefits to be derived from gathering additional or better
40 information and shall make operational recommendations
41 on the best possible methods for obtaining the desired
42 information.

43 (5) The director of the center or members of its staff
44 shall meet on a regular basis with the commissioner of the
45 department of commerce, other officials of the department
46 and members of the Legislature to provide the results of its
47 research and to provide policy advice and analysis.

48 (6) The center shall cooperate with and maintain an
49 inventory of research efforts of universities and colleges
50 and other institutions or businesses within the state and a
51 register of scientific and technological research facilities in
52 the state.

53 (b) The division of research and strategic planning shall
54 develop a strategic plan for the economic development of
55 the state, its regions and specific industries including
56 tourism, manufacturing, timber, agriculture and other
57 rural development, coal, oil, gas and other extractive
58 resources, retail, service, distribution and small businesses.
59 Such a plan shall emphasize a coordinated effort of the
60 public and private sector toward balanced growth for the
61 state. Such plan shall include, but is not limited to, the
62 following:

63 (1) Assessing the state's economic strengths and
64 weaknesses;

65 (2) Developing and recommending short, intermediate
66 and long-term economic goals and plans, together with
67 options;

68 (3) Identifying barriers to economic growth and
69 diversification in the state;

70 (4) Recommending implementation procedures and
71 options utilizing and maximizing existing public and
72 private mechanism;

73 (5) Fostering and supporting scientific and
74 technological research in this state in cooperation with the
75 federal government, the various offices and divisions of the
76 department of commerce and other state and local
77 government agencies, educational institutions, nonprofit
78 institutions and organizations, business enterprises and
79 others concerned with scientific and technological research
80 development;

81 (6) Developing a program to attract investment in
82 research and development in high technology industries;

83 (7) Conducting a series of studies to determine the
84 feasibility of constructing natural gas transmission lines,
85 electric power generating facilities and coal processing
86 plants to be owned, either in whole or in part, or to be
87 operated, either in whole or in part, by the state of West
88 Virginia; and

89 (8) Maintaining a library of research materials,
90 including computer data bases, to accomplish the goals of
91 the division.

92 The division shall, based upon the data it collects and
93 analyzes as set forth in subdivisions (1) through (8) of this
94 section, and in cooperation with the other divisions of the
95 department, develop a set of specific plans and programs,
96 and recommend to the Legislature, on an annual basis,
97 appropriate legislation to implement and carry out such
98 plans, for the purpose of effectuating the purposes of this
99 article.

**§5B-1-10. Division of product marketing; purpose; powers and
duties generally.**

1 It shall be the duty of the division of product marketing:

2 (a) To develop such programs as are necessary for the
3 promotion and marketing of West Virginia arts, crafts and

4 products, and to implement said program in this state, in
5 the United States and in other countries;

6 (b) To design, develop and create, or to provide for the
7 design, development and creation of, such films,
8 videotapes, pamphlets, brochures, and other advertising
9 and promotional media, and to distribute the same in such a
10 manner as to enhance the public's knowledge of West
11 Virginia arts, crafts and products;

12 (c) To sponsor or participate in trade shows, trade fairs
13 or other events the purpose of which is to display, sell, or
14 increase public awareness of, West Virginia arts, crafts and
15 products;

16 (d) To design and implement a program of direct sales of
17 West Virginia arts, crafts and products; and to provide for
18 the publication and distribution of a catalog which
19 adequately displays and describes the arts, crafts and
20 products being offered for sale, employing such direct mail
21 or other means of distribution as the director deems
22 appropriate;

23 (e) To cooperate with artists, craftsmen, guilds,
24 cooperatives, and other organizations, the purposes of
25 which are to enhance or promote West Virginia arts, crafts
26 and products, and to assist said artists, craftsmen, guilds,
27 cooperatives and organizations in the development of their
28 own marketing programs;

29 (f) To develop markets in West Virginia, other states and
30 other nations for said arts, crafts and products by
31 employing persons who shall act as sales agents for said
32 arts, crafts and products;

33 (g) To cooperate with other governmental departments,
34 and with other groups, guilds, cooperatives, or other
35 entities, whether public or private, the purpose of which is
36 to further enhance and promote the sale, use, distribution or
37 public knowledge of West Virginia arts, crafts and
38 products; and

39 (h) To perform such other duties or functions, or to
40 engage in such other activities, as the director may from
41 time to time direct.

**§5B-1-11. Division of small business development; purposes;
powers and duties generally.**

1 It shall be the duty of the division of small business

2 development to establish a statewide small business
3 innovation center network to be located on the campuses or
4 operated in conjunction with the colleges and universities
5 of West Virginia.

6 The director shall be responsible for the management and
7 operation of the center network, subject to the program
8 policies adopted by the center network board of directors.

9 The center network shall:

10 (a) Serve as a liaison between the department of
11 commerce and the state regional small business innovation
12 center board;

13 (b) Provide direction, guidance and assistance to
14 regional small business innovation centers;

15 (c) Conduct feasibility studies regarding the
16 establishment or certification of new regional small
17 business innovation centers;

18 (d) Conduct conferences and seminars for regional
19 small business innovation centers to promote and
20 encourage the utilization of sound and innovative
21 approaches to the discharge of the functions and duties of
22 the regional small business innovation centers; and

23 (e) Prepare and submit such reports, plans, suggestions
24 and recommendations to the department on jobs and
25 economic development as may from time to time be
26 required.

27 To the extent practicable, the director shall utilize
28 student interns and qualified new and innovative business
29 vendors, including, but not limited to, private management
30 consultants, private consulting engineers and private
31 testing laboratories, to provide services described in this
32 section.

33 The director is further authorized and empowered to
34 apply for and receive appropriations, gifts, bequests or
35 grants of money, services, material, real estate or other
36 things of value from any agency of the United States
37 government, any agency of the state of West Virginia, any
38 municipality or county within this state, any school board
39 or college or university supported in whole, or in part, by
40 this state or any other person, firm, partnership, association
41 or corporation, within or without this state, and any agency
42 of the state of West Virginia, any municipality or county
43 within this state, or any school board or college or

44 university supported in whole, or in part, by this state and is
45 hereby authorized and empowered to make appropriations
46 or grants to the regional small business innovation centers,
47 to assist in achieving the public purpose of this section. All
48 funds received by the director to carry out the provisions
49 herein shall be deposited with the state treasurer and
50 disbursed by the director to be used exclusively for carrying
51 out the provisions herein. Any appropriations, gifts,
52 bequests or grants received by the director with any
53 restriction or restrictions on the use thereof shall be
54 expended by the director in accordance with such
55 restriction or restrictions.

56 The director of the state business innovation center in
57 addition to such reports as may be required by the
58 department of commerce shall publish an annual report by
59 the first day of December of each year for distribution to the
60 governor, the Legislature, the department and the general
61 public. Such report shall describe the activities undertaken
62 by the state center and the regional centers pursuant to
63 these provisions in the preceding year.

**§5B-1-11a. Regional small business innovation centers;
locations; authority.**

1 (a) Upon the recommendation of the state director and a
2 demonstration for the need thereof, the state board of
3 directors may certify and provide funding for such number
4 of regional small business innovation centers as it may
5 consider necessary or desirable and within available
6 appropriations. Such regional small business innovation
7 centers shall be affiliated with institutions of higher
8 education, either public or private, and may be located at
9 such places where need exists for such centers.

10 (b) It is recognized that there exists at the present time
11 programs for the development of and assistance to small
12 businesses in the statewide network of the West Virginia
13 Small Business Development Center with regional centers
14 operating at the University of Charleston, West Virginia
15 University, West Virginia Northern Community College,
16 Parkersburg Community College, Southern Community
17 College of West Virginia, Concord College, Salem College,
18 Alderson-Broadus College, College of Graduate Studies,
19 and West Virginia Institute of Technology. These existing

20 programs are hereby established as regional small business
21 innovation centers.

22 (c) Each regional business innovation center shall be
23 authorized and permitted to employ such strategies,
24 techniques and innovations as it shall deem desirable in
25 accomplishing the purposes of sections twelve through
26 twelve-e of this article.

27 (d) The president of each institution of higher education
28 establishing a regional small business innovation center
29 shall appoint a director for such center who shall serve at
30 the will and pleasure of such president.

**§5B-1-11b. State small business innovation center board
created; membership; regional center directors.**

1 There is hereby created the state small business
2 innovation network board which shall be composed of one
3 member representing each of the regional centers to be
4 named by the president of the respective colleges or
5 universities, and the state director of the small business
6 innovation center network who shall serve as chairman of
7 the board.

§5B-1-11c. Functions and duties of regional centers.

1 It shall be the function of regional small business
2 innovation centers to:

3 (a) Establish programs to identify entrepreneurs with
4 marketable ideas and to support the organization and
5 development of new business and innovative businesses,
6 including technologically oriented enterprises;

7 (b) Conduct conferences and seminars to provide new
8 and innovative businesses with access to individuals and
9 organizations with specialized expertise;

10 (c) Develop and maintain a source file and an
11 information program to establish a statewide network of
12 public, private and educational resources to assist the
13 organization and development of new and innovative
14 businesses, and to furnish centralized services with regard
15 to public services and governmental programs;

16 (d) Provide new and innovative businesses with access
17 to managerial and technical expertise and to provide
18 assistance in resolving problems encountered by such
19 businesses;

20 (e) Conduct planning and research, including feasibility
21 studies and market research in cooperation with the
22 department;

23 (f) Assist in the identification and development of new
24 and innovative business opportunities;

25 (g) Foster the establishment and strengthening of business
26 service agencies, including trade associations and
27 cooperatives, which provide services to new and innovative
28 businesses;

29 (h) Implement the furnishing of business counseling,
30 management training and other related services, with
31 special emphasis on the development of management
32 training programs using the resources of the business
33 community, the state labor-management council and state
34 and private colleges and universities, and with emphasis
35 upon providing management training of sufficient scope
36 and duration to develop entrepreneurial and managerial
37 self-sufficiency on the part of the new and innovative
38 businesses served;

39 (i) Provide access to business analysts who can refer
40 new and innovative businesses to available experts;

41 (j) Conduct studies, research and counseling concerning
42 the managing, financing and operation of new and
43 innovative businesses;

44 (k) Foster and support scientific and technological
45 research for the development and application of new
46 technologies identified as having significant potential for
47 economic growth in the state or designed to further new and
48 more extensive uses of the natural and other resources of
49 the state, and to assist in technology transfer, research and
50 coupling from existing sources to new and innovative
51 businesses;

52 (l) Organize, conduct, sponsor or cooperate in and assist
53 the conducting of institutes, conferences, demonstrations
54 and studies relating to the stimulation and formulation of
55 new and innovative businesses;

56 (m) Assist new and innovative businesses in solving
57 problems concerning operations, manufacturing,
58 engineering, technology exchange and development,
59 personnel administration, marketing, sales,
60 merchandising, finance, accounting, business strategy
61 development and other disciplines required for business

62 growth and expansion, increased productivity and
63 management improvement;

64 (n) Provide access to professional specialists to conduct
65 research or to provide counseling assistance to new and
66 innovative businesses whenever the need arises;

67 (o) Determine the availability of financial resources and
68 recommend methods for delivery of financial assistance to
69 new and innovative businesses, including methods of
70 securing equity capital;

71 (p) Cooperate with other regional business innovation
72 centers for the purpose of coordinating efforts;

73 (q) Provide, whenever practicable, feasible and
74 desirable, housing for new and innovative businesses in
75 order to better accomplish the purposes set forth herein;

76 (r) Assist businesses participating in the program to
77 develop comprehensive business plans with specific
78 business targets, objectives and goals;

79 (s) Provide for such other nonfinancial services as
80 deemed necessary for the establishment, preservation and
81 growth of participating businesses, including, but not
82 limited to, loan packaging, financial counseling,
83 accounting and bookkeeping assistance, marketing
84 assistance and management assistance;

85 (t) Assist participating businesses in obtaining equity
86 and debt financing;

87 (u) Establish regular performance monitoring and
88 reporting systems for participating businesses to assure
89 compliance with their business plans;

90 (v) Analyze and report the causes of success and failure
91 of new and innovative businesses participating in the
92 program;

93 (w) Provide counseling and assist with technology
94 development when necessary to help new and innovative
95 businesses find solutions for complying with
96 environmental, energy, health, safety and other federal,
97 state and local laws and regulations;

98 (x) Apply for and receive gifts or grants in money or in
99 kind from any person, organization, governmental agency
100 or entity whatsoever which shall be exclusively utilized by
101 the regional business innovation center receiving such gifts
102 or grants; and

103 (y) Prepare an annual report by the first day of

104 September of each year detailing the operation of the center
105 for the previous year and submit the same to the director of
106 the state business innovation center, and, as to regional
107 business innovation centers existing and incorporated by
108 virtue of these provisions, prepare and submit by the first
109 day of September, one thousand nine hundred eighty-five, a
110 report to the same authorities detailing a preliminary plan
111 for the implementation of the program, including
112 coordination and expansion of the various original
113 programs.

**§5B-1-11d. Documentary materials concerning trade secrets;
commercial or financial information;
confidentiality.**

1 Any documentary material or data made or received by
2 any public body for the purpose of furnishing assistance to a
3 new and innovative business, to the extent that such
4 material or data consists of trade secrets or commercial or
5 financial information regarding the operation of such
6 businesses, shall not be considered public records, and shall
7 be exempt from disclosure pursuant to the provisions of
8 chapter twenty-nine-b of this code. Any discussion or
9 consideration of such trade secrets or commercial or
10 financial information may be held by the public body in
11 executive session closed to the public, notwithstanding the
12 provisions of article nine-a, chapter six of this code.

§5B-1-11e. Rules and regulations.

1 The director of the state small business innovation center
2 shall make and adopt rules and regulations for the
3 establishment, operation and maintenance of any regional
4 business innovation center established including such
5 rules, regulations and standards as may be necessary for
6 compliance with any federal statute pertaining to grants-
7 in-aid, and such other rules and regulations as may be
8 necessary to effectuate the purposes set forth herein,
9 including regulations establishing any fee to be charged for
10 services provided pursuant hereto.

**§5B-1-12. Division of parks and recreation created; duties,
records and equipment transferred from the
department of natural resources; funds.**

1 (a) The duties, powers and functions of the division of

2 parks and recreation within the department of natural
3 resources are hereby transferred to the department of
4 commerce.

5 (b) All books, papers, maps, charts, plans, literature and
6 other records, and all equipment in the possession of the
7 division of parks and recreation within the department of
8 natural resources shall be delivered or turned over to the
9 department of commerce.

10 (c) The department of commerce shall have the duty and
11 authority to administer those properties which are a part of
12 the state parks and public recreation system, but the legal
13 title to such properties shall remain with the department of
14 natural resources.

15 (d) All existing contracts and obligations of the division
16 of parks and recreation shall remain in full force and effect
17 and any existing contracts and obligations relating to parks
18 and recreation shall be performed by the department of
19 commerce.

20 (e) The unexpended balance existing on the effective
21 date of this chapter in any appropriation made to the
22 division of parks and recreation within the department of
23 natural resources is hereby transferred and appropriated to
24 the department of commerce for the use of the division of
25 parks and recreation for the fiscal period ending the
26 thirtieth day of June, one thousand nine hundred eighty-
27 five.

28 The director of the department of natural resources and
29 the commissioner of commerce shall cooperate fully and
30 exercise their powers to facilitate the development of new
31 or the expansion of existing park facilities, including but
32 not limited to, the authorities as set forth in this chapter
33 relating to the department of commerce, and as set forth in
34 section twenty, article one, chapter twenty of this code,
35 relating to the department of natural resources, as amended
36 from time to time.

**§5B-1-13. Division of parks and recreation; purpose; powers
and duties generally.**

1 It shall be the duty of the division of parks and recreation
2 to have within its jurisdiction and supervision:

3 (a) All state parks and state recreation areas, including
4 all lodges, cabins, swimming pools, motorboating and all

5 other recreational facilities therein, except the roads
6 therein which, by reason of section one, article four, chapter
7 seventeen, are transferred to the state road system and to
8 the responsibility of the commissioner of highways with
9 respect to the construction, reconstruction and
10 maintenance of the roads or any future roads for public
11 usage on publicly owned lands in future state parks, state
12 forests and public hunting and fishing areas;

13 (b) The authority and responsibility to do the necessary
14 cutting and planting of vegetation along road rights-of-way
15 in state parks and recreational areas;

16 (c) The administration of all laws and regulations
17 relating to the establishment, development, protection, use
18 and enjoyment of all state parks and state recreational
19 facilities consistent with the provisions of this article:
20 *Provided*, That nothing herein shall be construed to assign
21 to the division of parks and recreation of the department of
22 commerce the law-enforcement duties set forth in article
23 seven, chapter twenty of this code, which duties shall
24 remain the responsibility of the department of natural
25 resources.

26 (d) The Berkeley Springs sanitarium in Morgan County
27 shall be continued as a state recreational facility under the
28 jurisdiction and supervision of the department of commerce
29 and shall be managed, directed and controlled as prescribed
30 here in this article and in article one, chapter twenty of the
31 code.

32 The commissioner shall have and is hereby granted all of
33 the powers and authority and shall perform all of the
34 functions and duties with regard to Berkeley Springs
35 sanitarium that were previously vested in and performed by
36 the director of the department of natural resources, who
37 shall no longer have such power and authority and whose
38 power and authority with regard to Berkeley Springs
39 sanitarium is hereby abolished;

40 (e) The Washington Carver camp in Fayette County is
41 hereby transferred from the department of natural
42 resources to the commissioner who shall have the
43 jurisdiction and supervision of the camp subject to the
44 jurisdiction and authority of the department of culture and
45 history as provided under section thirteen, article one,
46 chapter twenty-nine of this code. The commissioner shall

47 manage the Washington Carver camp as a state recreational
48 facility and a component of the state park system; and
49 (f) The commissioner of the department of commerce
50 shall be primarily responsible for the execution and
51 administration of the provisions herein as an integral part
52 of the parks and recreation program of the state and shall
53 organize and staff his division for the orderly, efficient and
54 economical accomplishment of these ends.

§5B-1-13a. Definitions; state parks and recreation system.

1 As used in this article, unless the context clearly requires
2 otherwise:

3 “Bonds” shall mean bonds issued by the commissioner.

4 “Cost of project” shall embrace the cost of construction,
5 the cost of all land, property, material and labor which are
6 deemed essential thereto, cost of improvements, financing
7 charges, interest during construction, and all other
8 expenses, including legal fees, trustees’, engineers’ and
9 architects’ fees which are necessarily or properly incidental
10 to the project.

11 “Project” shall be deemed to mean collectively the
12 acquisition of land, the construction of any buildings or
13 other works, together with incidental approaches,
14 structures and facilities, reasonably necessary and useful in
15 order to provide new or improved recreational facilities.

16 “Recreational facilities” shall mean and embrace cabins,
17 lodges, swimming pools, golf courses, restaurants,
18 commissaries and other revenue producing facilities in any
19 state park.

20 “Rent or rental” shall include all moneys received for the
21 use of any recreational facility.

22 In addition to the powers and duties vested in the
23 commissioner elsewhere in this chapter, he shall have the
24 power and duty to establish and maintain a state park and
25 public recreation system, and to do all things necessary and
26 incident to the development and administration thereof.
27 Individual projects of such system may be financed from
28 any moneys of the department available for such purposes,
29 or by the issuance of park development revenue bonds as
30 provided in this section.

31 The purposes of such system shall be to promote
32 conservation by preserving and protecting natural areas of

33 unique or exceptional scenic, scientific, cultural,
34 archaeological or historic significance, and to provide
35 outdoor recreational opportunities for the citizens of this
36 state and its visitors. In accomplishing such purposes the
37 commissioner shall, insofar as is practical, maintain in their
38 natural condition lands that are acquired for and
39 designated as state parks. The commissioner may
40 promulgate rules and regulations to control such uses,
41 subject to the provisions of chapter twenty-nine-a of this
42 code, and may further provide for the construction and
43 operation of cabins, lodges, resorts, restaurants and other
44 developed recreational and service facilities. The
45 commissioner shall not permit public hunting, the
46 exploitation of minerals or the harvesting of timber for
47 commercial purposes in any state park: *Provided*, That
48 nothing herein shall be construed so as to limit the authority
49 of the director of the department of natural resources with
50 respect to public lands, including state parks, the title to
51 which is vested in him by virtue of the provisions of chapter
52 twenty of this code.

53 All revenue derived from the operation of the state park
54 and public recreation system shall be expended by the
55 director solely for operating, maintaining and improving the
56 system, or for the retirement of park development revenue
57 bonds.

**§5B-1-13b. Authority of commissioner to issue park
development revenue bonds; grants and gifts.**

1 The commissioner, with the approval of the governor, is
2 hereby empowered to raise the cost of any project, as
3 defined hereinabove, by the issuance of park development
4 revenue bonds of the state, the principal of and interest on
5 which bonds shall be payable solely from the special fund
6 herein provided for such payment. Such bonds shall be
7 authorized by order of the commissioner, approved by the
8 governor, which shall recite an estimate by the
9 commissioner of the cost of the project, and shall provide
10 for the issuance of bonds in an amount sufficient, when sold
11 as hereinafter provided, to produce such cost, less the
12 amount of any grant or grants, gift or gifts received, or in the
13 opinion of the commissioner expected to be received from

14 the United States of America or from any other source. The
15 acceptance by the commissioner of any and all such grants
16 and gifts, whether in money or in land, labor or materials, is
17 hereby expressly authorized. All such bonds shall have and
18 are hereby declared to have all the qualities of negotiable
19 instruments under the provisions of article eight, chapter
20 forty-six of this code. The commissioner shall have the
21 power:

22 (a) To issue negotiable bonds, security interests of notes
23 and to provide for and secure the payment thereof, and to
24 provide for the rights of the holders thereof, and to
25 purchase, hold and dispose of any of its bonds, security
26 interests or notes.

27 (b) To sell, at public or private sale, any bond or other
28 negotiable instrument, security interests or obligation of
29 the commissioner in any manner and upon such terms as the
30 commissioner deems would best serve the purposes set forth
31 herein.

32 (c) To issue its bonds, security interests and notes
33 payable solely from the revenues or funds available to the
34 commissioner therefor; and the commissioner may issue its
35 bonds, security interests or notes in such principal amounts
36 as it shall deem necessary to provide funds for any purposes
37 herein, including:

38 (i) The payment, funding or refunding of the principal
39 of, interest on, or redemption premiums on any bonds,
40 security interests or notes issued by it whether the bonds,
41 security interests, notes or interest to be funded or refunded
42 have or have not become due.

43 (ii) The establishment or increase of reserves to secure
44 or to pay bonds, security interests, notes or the interest
45 thereon and all other costs or expenses of the commissioner
46 incident to and necessary or convenient to carry out its
47 purposes and powers. Any bonds, security interests or notes
48 may be additionally secured by a pledge of any revenues,
49 funds, assets or moneys of the special fund herein provided.

50 (d) To issue renewal notes, or security interests, to issue
51 bonds to pay notes or security interests and, whenever it
52 deems refunding expedient, to refund any bonds by the
53 issuance of new bonds, whether the bonds to be refunded
54 have or have not matured except that no such renewal notes
55 shall be issued to mature more than ten years from date of

56 issuance of the notes renewed, and no such refunding bonds
57 shall be issued to mature more than twenty-five years from
58 the date of issuance.

59 (e) To apply the proceeds from the sale of renewal notes,
60 security interests or refunding bonds to the purchase,
61 redemption or payment of the notes, security interests or
62 bonds to be refunded.

63 (f) To accept gifts or grants or property, funds, security
64 interests, money, materials, labor, supplies or services from
65 the United States of America or from any governmental
66 unit or any person, firm or corporation, and to carry out the
67 terms or provisions of, or make agreements with respect to,
68 or pledge, any gifts or grants, and to do any and all things
69 necessary, useful, desirable or convenient in connection
70 with the procuring, acceptance or disposition of gifts or
71 grants.

72 (g) To the extent permitted under its contracts with the
73 holders of bonds, security interests or notes of the authority,
74 to consent to any modification of the rate of interest, time of
75 payment of any installment of principal or interest, security
76 or any other term of any bond, security interests, note or
77 contract or agreement of any kind to which the
78 commissioner is a party.

79 (h) The commissioner shall determine the form of such
80 bonds, including coupons to be attached thereto to evidence
81 the right of interest payments, which bonds shall be signed
82 by the commissioner, under the great seal of the state,
83 attested by the secretary of state, and the coupons attached
84 thereto shall bear the facsimile signature of the
85 commissioner. In case any of the officers whose signatures
86 appear on the bonds or coupons shall cease to be such
87 officers before the delivery of such bonds, such signatures
88 shall nevertheless be valid and sufficient for all purposes
89 the same as if they had remained in office until such
90 delivery.

91 (i) The commissioner shall fix the denominations of the
92 bonds, the principal and interest of which shall be payable
93 at the office of the treasurer of the state of West Virginia, at
94 the capitol of the state, or, at the option of the holder, at
95 some bank or trust company in the city of New York to be
96 named in the bonds in such medium as may be determined
97 by the commissioner.

98 (j) The commissioner may provide for the registration of
99 such bonds in the name of the owner as to principal alone,
100 and as to both principal and interest under such terms and
101 conditions as the commissioner may determine, and shall
102 sell such bonds in such manner as he may determine to be
103 for the best interest of the state, taking into consideration
104 the financial responsibility of the purchaser, and the terms
105 and conditions of the purchase, and especially the
106 availability of the proceeds of the bonds when required for
107 payment of the cost of the project.

108 (k) The proceeds of such bonds shall be used solely for
109 the payment of the cost of the project, and shall be deposited
110 and checked out as provided by section fourteen-g of this
111 article, and under such further restrictions, if any, as the
112 commissioner may provide.

113 (l) If the proceeds of such bonds, by error in calculation
114 or otherwise, shall be less than the cost of the project,
115 additional bonds may in like manner be issued to provide
116 the amount of the deficiency, and unless otherwise provided
117 for in the trust agreement hereinafter mentioned, shall be
118 deemed to be of the same issue, and shall be entitled to
119 payment from the same fund, without preference or priority
120 as the bonds before issued.

121 (m) If the proceeds of bonds issued for the project shall
122 exceed the cost thereof, the surplus shall be paid into a
123 special fund to be established for payment of the principal
124 and interest of such bonds as specified in the trust
125 agreement provided for in the following section. Such fund
126 may be used for the purchase of any of the outstanding
127 bonds payable from such fund at the market price, but at
128 not exceeding the price, if any, at which such bonds shall in
129 the same year be redeemable, and all bonds redeemed or
130 purchased shall forthwith be cancelled, and shall not again
131 be issued. Prior to the preparation of definitive bonds, the
132 commissioner may, under like restrictions, issue temporary
133 bonds with or without coupons, exchangeable for definitive
134 bonds upon the issuance of the latter. Such revenue bonds
135 may be issued without any other proceedings or the
136 happening of any other conditions or things than those
137 proceedings, conditions and things which are specified and
138 required herein or by the constitution of the state.

§5B-1-13c. Tax exemption.

1 The exercise of the powers granted to the commissioner
2 herein will be in all respects for the benefit of the people of
3 the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 recreational opportunities and is a public purpose. As the
6 operation and maintenance of park development projects
7 will constitute the performance of essential government
8 functions, the commissioner shall not be required to pay
9 any taxes or assessments upon any park development
10 projects or upon any property acquired or used by the
11 commissioner or upon the income therefrom. Such bonds
12 and notes and all interest and income thereon shall be
13 exempt from all taxation by this state, or any county,
14 municipality, political subdivision or agency thereof,
15 except inheritance taxes.

§5B-1-13d. Investment in notes, bonds, and security interests.

1 The notes, bonds, and security interests of the
2 commissioner are hereby made securities in which the state
3 board of investments, all insurance businesses, all banking
4 institutions, trust companies, building and loan
5 associations, savings and loan associations upon which the
6 notes, security interests or bonds become subject to
7 redemption plus accrued interest to such date. Upon such
8 purchase such notes, security interests or bonds shall be
9 cancelled.

§5B-1-13e. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of
3 indebtedness of commissioner and such notes, security
4 interests or bonds or other evidence of indebtedness shall
5 not be a debt of the state of West Virginia, and such notes,
6 security interests or bonds or other evidence of
7 indebtedness shall contain on the face thereof a statement
8 to such effect.

§5B-1-13f. Trustee for holders of park development revenue bonds.

1 The commissioner may enter into an agreement or
2 agreements with any trust company, or with any bank

3 having the powers of a trust company, either within or
4 outside the state, as trustee for the holders of bonds issued
5 hereunder, setting forth therein such duties of the state and
6 of the commissioner in respect to acquisition, construction,
7 improvement, maintenance, operation, repair and
8 insurance of the project, the conservation and application
9 of all moneys, the insurance of moneys on hand or on
10 deposit, and the rights and remedies of the trustee and the
11 holders of the bonds, as may be agreed upon with the
12 original purchasers of such bonds, and including therein
13 provisions restricting the individual right of action of
14 bondholders as is customary in trust agreements respecting
15 bonds and debentures of corporations, protecting and
16 enforcing the rights and remedies of the trustee and the
17 bondholders, and providing for approval by the original
18 purchaser of the bonds of the appointment of consulting
19 architects, and of the security given by those who contract
20 to construct the project, and by any bank or trust company
21 in which the proceeds of bonds or rentals shall be deposited,
22 and for approval by the consulting architects of all
23 contracts for construction. All expenses incurred in
24 carrying out such agreement may be treated as a part of the
25 cost of maintenance, operation and repair of the project.

**§5B-1-13g. Proceeds of park development revenue bonds,
grants and gifts.**

1 The proceeds of all bonds sold for any park development
2 project and the proceeds of any grant or gift received by the
3 commissioner for any project financed by the issuance of
4 park development revenue bonds shall be paid to the
5 treasurer of the state of West Virginia, who shall not
6 commingle such funds with any other moneys, but shall
7 deposit them in a separate bank account or accounts. The
8 moneys in such accounts shall be paid out on check of the
9 treasurer on requisition of the commissioner, or of such
10 other person as the commissioner may authorize to make
11 such requisition. All deposits of such moneys shall, if
12 required by the treasurer or the commissioner, be secured
13 by obligation of the United States, of the state of West
14 Virginia, or of the commissioner, of a market value equal at
15 all times to the amount of the deposit, and all banking
16 institutions are authorized to give such deposits.

§5B-1-13h. Authority of commissioner to pledge revenue from recreational facilities as security.

1 The commissioner, with the approval of the governor,
2 shall have authority to pledge all revenue derived from any
3 project as security for any bonds issued to defray the cost of
4 such project. In any case in which the commissioner may
5 deem it advisable, he shall also have the authority to pledge
6 the revenue derived from any existing recreational facilities
7 under his control, or any state park or forest, as additional
8 security for the payment of any bonds issued under the
9 provisions of this article to pay the cost of any park
10 development project.

§5B-1-13i. Management and control of project.

1 The department shall properly maintain, repair, operate,
2 manage and control the project, fix the rates of rental, and
3 establish bylaws and rules and regulations for the use and
4 operation of the project, and may make and enter into all
5 contracts or agreements necessary and incidental to the
6 performance of its duties and the execution of its powers
7 hereunder.

§5B-1-13j. Provisions of constitution and law observed; what approval required.

1 It shall not be necessary to secure from any officer or
2 board not named in this article any approval or consent, or
3 any certificate or finding, or to hold an election, or to take
4 any proceedings whatever, either for the construction of
5 any project, or the improvement, maintenance, operation or
6 repair thereof, or for the issuance of bonds hereunder,
7 except such as are prescribed by these provisions or are
8 required by the constitution of this state.

9 Nothing contained herein shall be so construed or
10 interpreted as to authorize or permit the incurring of state
11 debt of any kind or nature as contemplated by the
12 provisions of the constitution of the state in relation to state
13 debt.

§5B-1-14. Restaurants and other facilities.

1 The commissioner may, on all areas under his jurisdiction
2 and control, operate commissaries, restaurants and other
3 establishments for the convenience of the public. For these

4 purposes the commissioner may purchase equipment,
5 foodstuffs, supplies and commodities, according to law.

**§5B-1-15. Contracts for operation of commissaries,
restaurants, recreational facilities and other
establishments limited to five years' duration;
renewal at option of commissioner; termination
of contract by the commissioner.**

1 When it is deemed necessary by the commissioner to enter
2 into a contract with a person, firm or corporation for the
3 operation of a commissary, restaurant, recreational facility
4 or other such establishment within the state parks and
5 public recreation system, such contract shall be for a
6 duration not to exceed five years, but a contract so made
7 may provide for an option to renew at the commissioner's
8 discretion for an additional term or terms not to exceed five
9 years at the time of renewal.

10 Any contract entered into by the commissioner shall
11 provide an obligation upon the part of the operator that he
12 maintain a level of performance satisfactory to the
13 commissioner, and shall further provide that any such
14 contract may be terminated by the commissioner in the
15 event he determines that such performance is
16 unsatisfactory and has given the operator reasonable notice
17 thereof.

**§5B-1-16. Acquisition of former railroad subdivision for
establishment of Greenbrier River Trail;
development, protection, operation and
maintenance of trail.**

1 (a) The commissioner may acquire from the West
2 Virginia railroad maintenance authority approximately
3 seventy-five miles of right-of-way along the former
4 Greenbrier subdivision of the Chessie Railroad System
5 between Caldwell in Greenbrier County and Cass in
6 Pocahontas County to be developed as the "Greenbrier
7 River Trail." The acquired property shall be operated under
8 the authority of the department of commerce and used for:

9 (1) The construction and maintenance of barriers for the
10 protection of the trail from motorized vehicular traffic and
11 for the protection of adjacent public and private property;
12 and

13 (2) The development, construction, operation and
14 maintenance of bicycle and hiking trails, horseback trails,
15 primitive camping facilities and other compatible
16 recreational facilities to be so designated by the
17 commissioner.

§5B-1-17. Correlation of projects and services.

1 The commissioner of the department of commerce shall
2 correlate and coordinate his park and recreation programs,
3 projects and developments with the functions and services
4 of other offices and divisions of the department and other
5 agencies of the state government so as to provide, consistent
6 with the provisions of this chapter, suitable and adequate
7 facilities, landscaping, personnel and other services at and
8 about all state parks and public recreation facilities under
9 his jurisdiction.

§5B-1-18. Sunset provision.

1 Unless sooner terminated by law, the department of
2 commerce shall terminate on the first day of July, one
3 thousand nine hundred ninety-one, in accordance with the
4 provisions of article ten, chapter four of this code.

**ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL
DEVELOPMENT.**

**§5B-2-1. Office of economic and community development
abolished; records and property of the office of
economic and community development transferred
to the office of community and industrial
development and department of commerce.**

1 The office of economic and community development is
2 hereby abolished and the governor shall, by executive
3 order, transfer to the office of community and industrial
4 development or the department of commerce, the functions,
5 personnel and property, with any liens relative thereto, of
6 the office of economic and community development, as he
7 may deem necessary.

8 All books, papers, maps, charts, plans, literature and
9 other records of all equipment and property in the
10 possession of the office of economic and community
11 development or of any officer or employee thereof, upon the
12 effective date of this chapter shall be turned over or

13 delivered to the office of the governor.

14 All existing contracts and obligations of the office of
15 economic and community development shall remain in full
16 force and effect and shall be performed by the governor.

**§5B-2-2. Office of community and industrial development
created; appointment of director; compensation;
rules and regulations.**

1 There is hereby created within the office of the governor
2 the office of community and industrial development. A
3 director of the office shall be appointed by, and shall serve
4 at the will and pleasure of, the governor and shall be paid a
5 salary as fixed by the governor within legislative
6 appropriation. The director shall have administrative
7 control and supervision of the office.

8 The director shall promulgate rules and regulations to
9 carry out the purposes and programs of the office, to include
10 generally the programs available, and the procedure and
11 eligibility of application relating to assistance under such
12 programs; these rules and regulations shall not be subject to
13 the provisions of chapter twenty-nine-a of this code, but
14 shall be filed with the secretary of state.

§5B-2-3. Divisions created.

1 There are hereby created within the office of community
2 and industrial development:

- 3 (1) The division of community development;
- 4 (2) The division of financial and technical assistance;
- 5 (3) The division of administration;
- 6 (4) The division of industrial development;
- 7 (5) The division of small business; and
- 8 (6) The division of employment and training.

9 Each said division shall be under the control of a director
10 to be appointed by the director of the office of community
11 and industrial development and who shall be qualified by
12 reason of exceptional training and experience in the field of
13 activities of his respective division and shall serve at the
14 will and pleasure of the director.

15 In accordance with the provisions of section six, article
16 one of this chapter, the governor may, by executive order,
17 transfer any of the duties or functions of, or appropriations
18 made to, the office to the department of commerce; and, he

19 may, by executive order, and at the request of the director,
20 create such additional divisions or abolish such existing
21 divisions as he deems necessary to carry out the provisions
22 of this chapter. The authority hereby vested in the governor
23 shall expire on January one, one thousand nine hundred
24 eighty-six.

**§5B-2-4. Office to conduct certain feasibility studies; reports
to the Legislature; definitions.**

1 The director shall assign to an appropriate division of the
2 office the duty and responsibility to conduct studies to
3 determine the feasibility of establishing programs or
4 recommending legislation for the establishment of
5 programs relative to coal processing, farm development,
6 enterprise zones, forest resources and jobs development.
7 Such division may conduct inquiries and hold hearings
8 regarding such programs in order to provide interested
9 persons the opportunity to comment, and shall report to the
10 Legislature regarding its findings and policies with respect
11 to each of these areas not later than the first day of the
12 regular session of the Legislature in the year one thousand
13 nine hundred eighty-six, and every two years thereafter.

14 For the purposes of this section:

15 (a) The term "coal processing" means the process by
16 which coal is converted to coke of the non-by-product
17 variety;

18 (b) The term "farm development" means the promotion,
19 encouragement and development of farming and farm
20 lands;

21 (c) The term "enterprise zones" means any area of a city
22 or county which has a continuous boundary; is an area of
23 pervasive poverty, unemployment and economic distress;
24 the average rate of unemployment in such area for the most
25 recent eighteen-month period for which data are available
26 was at least one and one-half times the average national
27 rate of unemployment for such eighteen month period; at
28 least seventy percent of the residents living in the area have
29 incomes below eighty percent of the median income of the
30 residents of the city or county in which it is located; the
31 population of all census tracts in the area decreased by ten
32 percent or more between the two most recent decennial
33 United States census and the city or county in which said

34 area is located establishes that either: (i) chronic
35 abandonment or demolition of commercial or residential
36 structures exist in the area; or (ii) substantial tax
37 delinquencies relating to ad valorem real property taxes of
38 commercial or residential structures exist in the area;

39 (d) The term "forest resources development" means a
40 program to: (i) improve the business climate for forest
41 industries and the general awareness of forestry potential;
42 (ii) develop a strong state forestry agency; (iii) improve
43 forest resources data; (iv) improve the transportation
44 system for wood products; and, (v) improve forestry
45 knowledge and practices of private landowners; and

46 (e) The term "jobs development" means a program to
47 maintain existing employment, and to promote new
48 employment opportunities for the people of this state,
49 particularly in areas of high unemployment.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

§5B-3-1. Legislative findings.

1 It is hereby found and declared that:

2 (a) The economy of the state of West Virginia and
3 opportunities for employment within the state are
4 increasingly dependent upon the international exports of
5 West Virginia manufactured goods and services and the
6 growth of international export markets for those
7 manufactured goods and services;

8 (b) Other states have utilized, or are preparing to utilize,
9 the resources of their state governments to stimulate,
10 facilitate and promote international exports;

11 (c) One in seven manufacturing jobs in the state of West
12 Virginia are attributable to exporting;

13 (d) The export of services has become vital to the growth
14 and stability of the state of West Virginia's economy;

15 (e) The position of West Virginia as an exporting state is
16 threatened by aggressive government supported export
17 development policies of foreign countries;

18 (f) Competition among businesses and countries will
19 endure and intensify as more countries seek to expand their
20 international export capacities;

21 (g) Financial assistance offered by the federal
22 government to exporters is insufficient to meet the
23 competition offered by foreign countries;

24 (h) West Virginia exporters find it increasingly difficult
25 to compete with foreign exporters which benefit from their
26 governmentally supported financing programs;

27 (i) Companies seeking to enter foreign markets face
28 severe problems financing and insuring their transactions;

29 (j) Expanding international export markets is essential
30 in order to maintain a vigorous and growing economy and to
31 provide adequate job opportunities for citizens of this state;

32 (k) The state of West Virginia has a responsibility to
33 create employment opportunities by encouraging and
34 stimulating the development of international export sales
35 and markets by West Virginia companies; and

36 (l) Increased export sales may best be stimulated by
37 making financial assistance available to West Virginia
38 businesses to develop and expand international export
39 markets and to ensure the competitiveness of West Virginia
40 products and services in foreign markets, thereby
41 increasing employment opportunities available to the
42 citizens of the state of West Virginia.

43 It is hereby declared to be the policy of the state of West
44 Virginia, in the interest of promoting the general welfare of
45 all of the people of the state, to increase job opportunities
46 through stimulating the expansion of international export
47 markets of West Virginia products and services, by
48 providing financial assistance through the authority
49 hereinafter created for that purpose.

§5B-3-2. Definitions.

1 The following words, as used in this article, shall have the
2 meanings set forth below, unless the context clearly
3 requires otherwise:

4 (a) "Authority" means "The West Virginia Export
5 Development Authority" created by this article;

6 (b) "Board" means the board of directors of the
7 authority;

8 (c) "Bond" means any type of interest bearing
9 obligation, including, without limitation, any bond, note,
10 bond anticipation note, or other evidence of indebtedness
11 whether general or special, whether negotiable or
12 nonnegotiable in form, whether in bearer or registered
13 form, whether in temporary or permanent form, whether
14 with or without interest coupons, and regardless of the
15 source of payment;

16 (d) "Director" means a member of the board;

17 (e) "Commercial loss" means the failure of the buyer to
18 pay to the West Virginia exporter when due all or part of the
19 gross invoice value as denominated in United States
20 currency of an eligible export loan due to the insolvency of
21 the buyer or failure of the buyer to pay to the West Virginia
22 exporter all or part of the gross invoice value as
23 denominated in United States currency of an eligible export
24 loan on the due date; and

25 (f) "Political loss" means the losses incurred by a West
26 Virginia exporter on an eligible export loan from dollar
27 transfer delays, war, revolution, license revocation,
28 diversion of goods, and similar politically related incidents
29 occurring in the buyer's country that cause a loss to the
30 West Virginia exporter.

**§5B-3-3. West Virginia export development authority—
Creation and purposes.**

1 There is hereby created "The West Virginia Export
2 Development Authority," a body politic and corporate,
3 hereinafter referred to as the "Authority."

4 The purpose of this authority shall be to:

5 (a) Assist, promote, encourage, develop and advance
6 economic prosperity and employment throughout this state
7 by fostering the expansion of exports of manufactured
8 goods and services to foreign purchasers;

9 (b) Cooperate and act in conjunction with other
10 organizations, public and private, the objects of which are
11 the promotion and advancement of export trade activities
12 in the state of West Virginia;

13 (c) Establish a source of funding credit guarantees and
14 insurance to support export development not otherwise
15 available to West Virginia and medium sized businesses;
16 and

17 (d) Provide financial counseling to potential and
18 existing exports.

**§5B-3-4. Board of directors—Members, officers,
qualifications, terms, oath, compensation,
quorum and delegation of power.**

1 (a) The governing and administrative powers of the
2 authority shall be vested in a board of directors consisting

3 of nine members who shall be appointed by the governor
4 with the advice and consent of the Senate. The governor or
5 his designated representative shall be the chairman of the
6 authority. No more than five members appointed by the
7 governor may be of the same political party.

8 All directors of the authority shall be residents of the
9 state of West Virginia. The directors shall annually elect one
10 of their members as vice chairman, one as secretary and one
11 as treasurer. The board may elect such other officers as it
12 deems proper. Appointments to fill a vacancy of one of the
13 appointed members shall be made in the same manner as
14 the original appointment.

15 (b) Each member of the board shall be a person of
16 recognized ability and experience in one of the following
17 areas: Finance; international trade; business management;
18 and economics.

19 (c) The governor shall appoint three members of the
20 board whose term shall expire on the third Monday in June,
21 one thousand nine hundred eighty-six; three members of
22 the board whose term shall expire on the third Monday in
23 June, one thousand nine hundred eighty-seven; three
24 members of the board whose term shall expire on the third
25 Monday in June, one thousand nine hundred eighty-eight.
26 Their respective successors shall be appointed for terms of
27 three years from the third Monday in June of the year of
28 appointment. Each member shall serve until his successor is
29 appointed and qualified.

30 (d) Each director before entering upon his duties shall
31 take and subscribe the oath of affirmation required by the
32 West Virginia Constitution. A record of each such oath or
33 affirmation shall be filed in the office of the secretary of
34 state.

35 (e) Members of the board shall not be entitled to
36 compensation for their services as members, but shall be
37 entitled to reimbursement for all necessary expenses
38 incurred in connection with the performance of their duties
39 as members.

40 (f) Five members of the board shall constitute a quorum
41 and the affirmative vote of the majority of members present
42 at a meeting of the board shall be necessary and sufficient
43 for any action taken by the board, except that the
44 affirmative vote of at least five members shall be required

45 for the approval of any resolution authorizing the issuance
46 of any bonds pursuant to this article.

47 (g) No vacancy in the membership of the board shall
48 impair the right of a quorum to exercise all rights and
49 perform all the duties of the board. Any action taken by the
50 board may be authorized by resolution at any regular or
51 special meeting and shall take effect upon the date the
52 chairman certifies the action of the authority by affixing his
53 signature to the resolution unless some other date is
54 otherwise provided in the resolution.

55 (h) The board may delegate to one or more of its
56 members or to its officials, agents or employees such powers
57 and duties as it may deem proper.

§5B-3-5. General powers.

1 The authority shall possess all the powers of a body
2 politic and corporate necessary and convenient to
3 accomplish the purposes of this article, including, without
4 any intended limitation upon the other powers hereby
5 conferred, the following:

6 (a) To borrow money and otherwise incur indebtedness
7 for any of its purposes; to issue bonds, debentures, notes or
8 other evidence of indebtedness, whether secured or
9 unsecured, therefor;

10 (b) To purchase, discount, sell, negotiate with or
11 without guaranty notes, other evidence of indebtedness,
12 and to sell and guarantee securities;

13 (c) To procure insurance to guarantee, insure, coinsure
14 and reinsure against political and commercial risk of loss,
15 and such other insurance as the authority may deem
16 necessary;

17 (d) To provide financial counseling services to West
18 Virginia businesses;

19 (e) To procure insurance to secure the payment of
20 principal and interest on any bonds, notes or other
21 obligations of the authority;

22 (f) To accept gifts, grants, or loans from and enter into
23 contracts or other transactions with any federal or state
24 agency, any municipality, any private organization or any
25 other source;

26 (g) To adopt, and from time to time amend or rescind
27 such bylaws, rules and regulations as may be necessary or

28 convenient for the performance of its functions, powers and
29 duties under this article;

30 (h) To sue and be sued;

31 (i) To purchase, receive, take by grant, gift, devise,
32 bequest or otherwise, lease, or otherwise acquire, own,
33 hold, improve, employ, use and otherwise deal in and with,
34 real or personal property, or any interest therein, wherever
35 situated;

36 (j) To sell, convey, lease, exchange, transfer or otherwise
37 dispose of, all or any of its property or any interest therein,
38 wherever situated;

39 (k) To adopt and use a seal; and

40 (l) To exercise all other powers and functions necessary
41 or appropriate to carry out the duties and purposes set forth
42 in this article.

**§5B-3-6. Stimulation and facilitation of funding for West
Virginia exports.**

1 (a) The authority is empowered to provide guaranteed
2 funding, as defined in subsection (c) below, for any eligible
3 export loan, as defined in subsection (b) below, through a
4 participating banking organization, as defined in
5 subsection (d) below.

6 (b) An eligible export loan shall consist of a loan from
7 the authority to any participating banking organization
8 located within the state of West Virginia to finance an
9 international preexport or export from the state which, in
10 the judgment of the authority, will:

11 (1) Create or maintain employment in West Virginia;
12 and

13 (2) Shall contain at least twenty-five percent of the
14 value of manufactured goods, coal products, lumber and
15 wood products or services whose final processing occurs in
16 West Virginia. An eligible export loan may include a pool of
17 individual exports, all of which, in the judgment of the
18 authority, meet the foregoing conditions.

19 (c) Guaranteed funding shall consist of a guarantee
20 against political or commercial loss in whole or in part of
21 principal and interest on an eligible export loan. Such a
22 guarantee may include, without limitation, insurance
23 against loss up to a stated amount. The maximum amount
24 payable under any guarantee, herein called the

25 "Guaranteed Amount," shall be specifically set forth in
26 writing, executed by the chairman and secretary of the
27 board, at the time any such guarantee is entered into by the
28 authority. Any guarantee entered into by the authority
29 hereunder shall not constitute a general obligation of the
30 state of West Virginia. Any guarantee made by the authority
31 hereunder shall not be terminated, cancelled or otherwise
32 revoked except in accordance with the terms thereof; shall
33 be conclusive evidence that such guarantee complies fully
34 with the provisions of this article; and shall be valid and
35 incontestable in the hands of a holder in due course of a
36 guaranteed eligible export loan.

37 (d) A participating banking organization shall be any
38 organization as defined by the state banking acts of West
39 Virginia; any agency or branch of a foreign banking
40 corporation licensed by the commissioner of banking; any
41 national bank, federal savings and loan association and
42 federal credit union located within this state who has been
43 approved by the board of directors of the authority to
44 participate in any eligible export loan or guaranteed
45 funding within the purposes of this article.

46 The authority may charge reasonable fees for providing
47 any eligible export loan or guaranteed funding pursuant to
48 this section to a participating banking organization.

49 (e) Prior to providing an eligible export loan or
50 guaranteed funding hereunder, the participating banking
51 organization shall make an investigation of a line of credit
52 to the exporter in order to determine its viability, the
53 economic benefits to be derived therefrom, the prospects for
54 repayment, and such other facts as it deems necessary in
55 order to determine that such an eligible export loan or
56 guaranteed funding is consistent with the purposes of this
57 article. The authority shall provide guaranteed funding
58 only if, and to the extent that, it determines, in its sole
59 discretion, that:

60 (1) Such guaranteed funding is reasonably necessary in
61 order to stimulate or facilitate the making of the eligible
62 export loan including, without limitation, the making of the
63 eligible export loan upon terms which will enable the loan
64 to be reasonably competitive with loans in other states or in
65 foreign countries; or

66 (2) Such guaranteed funding is reasonably necessary in

67 order to stimulate or facilitate the resale of such eligible
68 export loan to a holder in due course which would not
69 otherwise purchase such eligible export loan: *Provided,*
70 That the eligible export loan or guaranteed funding
71 provided by the authority to the participating banking
72 organization shall be loaned to the exporter at a fixed
73 interest rate and term as the authority may from time to
74 time require. The authority may condition the provision of
75 an eligible export loan or guaranteed funding hereunder
76 upon such other terms and conditions as it may deem
77 desirable to carry out the purposes of this article.

§5B-3-7. Annual report and audits.

1 On the first day of January of each year the authority
2 shall report on its operations for the preceding fiscal year to
3 the governor and the state Legislature. Such report shall
4 include a summary of the activities of the authority and a
5 complete operating and financial statement. The West
6 Virginia export development authority shall cause an
7 annual audit to be made by a resident certified public
8 accountant or a registered public accountant of its books,
9 accounts and records, with respect to its receipts,
10 disbursements and all other matters related to its financial
11 operations. The person performing such audit shall also
12 furnish copies of the audit report to the Speaker of the
13 House of Delegates, the President of the Senate and the
14 majority and minority leaders of both houses, and the
15 legislative auditor.

§5B-3-8. Powers to be interpreted broadly.

1 The powers enumerated in this article shall be
2 interpreted broadly to effectuate the purposes thereof and
3 shall not be construed as a limitation of powers.

§5B-3-9. Tax exemption.

1 The authority shall be and hereby is exempt from all
2 franchise, corporate, business and taxes of every nature
3 levied by the state, provided that nothing herein shall be
4 construed to exempt from any such taxes any person
5 receiving an eligible export loan or guaranteed funding
6 with the authority hereunder.

§5B-3-10. Conflict of interests.

1 (a) No member of the authority or officer, agent or
2 employee thereof shall, in his or her own name or in the
3 name of a nominee, hold an ownership interest of more than
4 seven and one-half percent in any association, trust,
5 corporation, partnership or other entity which is, in its own
6 name or in the name of a nominee, a party to a contract or
7 agreement upon which the member or officer, agent or
8 employee may be called upon to act or vote.

9 (b) With respect to any direct or any indirect interest,
10 other than an interest prohibited in subsection (a), in a
11 contract or agreement upon which the member or officer,
12 agent or employee may be called upon to act or vote, a
13 member of the authority or officer, agent or employee
14 thereof shall disclose the same to the secretary of the
15 authority prior to the taking of final action by the authority
16 concerning such contract or agreement and shall so disclose
17 the nature and extent of such interest and his or her
18 acquisition thereof, which disclosure shall be publicly
19 acknowledged by the authority and entered upon the
20 minutes of the authority. If a member of the authority or
21 officer, agent or employee thereof holds such an interest, he
22 or she shall refrain from any further official involvement in
23 regard to such contract of agreement, from voting on any
24 matter pertaining to such contract or agreement, and from
25 communicating with other members of the authority or its
26 officers, agents and employees concerning said contract or
27 agreement. Notwithstanding any other provision of law,
28 any contract or agreement entered into in conformity with
29 this subsection (b) shall not be void or invalid by reason of
30 the interest described in this subsection, nor shall any
31 person so disclosing the interest and refraining from further
32 official involvement as provided in this subsection be guilty
33 of an offense, be removed from office or be subject to any
34 other penalty on account of such interest.

35 (c) Any contract or agreement made in violation of
36 paragraph (a) or (b) of this section shall be null and void and
37 give rise to no action against the authority.

§5B-3-11. Personal liability of members or persons acting on behalf of the authority.

1 (a) No director or any person acting on behalf of the

2 authority executing any contracts, commitments or
3 agreements issued pursuant to this article shall be liable
4 personally upon such contracts, commitments or
5 agreements or be subject to any personal liability or
6 accountability by reason thereof.

7 (b) No director or any person acting on behalf of the
8 authority shall be personally liable for damage or injury
9 resulting from the performance of his duties hereunder.

**§5B-3-12. Financing of the authority; bonds payable solely
from revenues; bonds not state debt; execution,
form, delivery, conditions and sale of bonds.**

1 (a) The authority is hereby authorized to issue, sell and
2 provide for the retirement of bonds in the amount of fifty
3 million dollars to provide funds for the creation and
4 operation of the authority. Such bonds shall be limited
5 obligations of the authority, the principal of and interest on
6 which shall be payable solely out of the revenues derived by
7 the authority. Bonds issued under authority of this section
8 shall never constitute an indebtedness of the state of West
9 Virginia or the authority within the meaning of any state
10 constitutional provision or statutory limitation, but such
11 bonds shall be indebtedness payable solely from a revenue
12 producing source or from a special source, which source
13 does not include revenues from any tax or license, and shall
14 never constitute nor give rise to a pecuniary liability of the
15 state of West Virginia or the authority or a charge against
16 the general credit of the authority or the state or taxing
17 powers of the state, and such fact shall be plainly stated on
18 the face of each bond. Such bonds may be executed and
19 delivered at any time as a single issue or from time to time as
20 several issues, may be in such form and denominations, may
21 be of such tenor, shall be in coupon or registered form, may
22 be payable in such installments and at such time or times
23 not exceeding five years from their date, may be subject to
24 such terms of redemption, may be payable at such place or
25 places, may bear interest at such rate or rates payable at
26 such place or places and evidence in such manner, and may
27 contain such provisions not inconsistent herewith, all of
28 which shall be provided in the resolution of the authority
29 authorizing the bonds. Any bonds issued under the
30 authority of this section may be sold at public or private sale

31 at such price and in such manner and from time to time as
32 may be determined by the authority to be most
33 advantageous. The authority may pay all expenses,
34 premiums, insurance premiums and commissions which the
35 authority may deem necessary or advantageous in
36 connection with the authorization, sale and issuance
37 thereof from proceeds of the bonds.

38 (b) The resolution under which such bonds are
39 authorized to be issued or any security agreement,
40 including an indenture or trust indenture to be entered into
41 in connection therewith, may contain any agreements and
42 provisions customarily contained in instruments securing
43 bonds, including, without limiting the generality of the
44 foregoing, provisions respecting the fixing and collection of
45 obligations, the creation and maintenance of special funds,
46 and the rights and remedies available, in the event of
47 default, to the bondholders or to the trustee under such
48 security agreement, all as the authority shall deem
49 advisable and as shall not be in conflict with the provisions
50 of this article: *Provided*, That in making any such
51 agreements or provisions the authority shall not have the
52 power to obligate itself except with respect to eligible
53 export loans and shall not have the power to incur a
54 pecuniary liability or a charge upon the general credit of the
55 authority or of the state or against the taxing powers of the
56 state. The resolution of the authority authorizing any bonds
57 hereunder and any security agreement securing such bonds
58 may provide that, in the event of default in payment of the
59 principal of or the interest on such bonds or in the
60 performance of any agreement contained in such
61 proceedings or security agreement, such payment and
62 performance may be enforced by mandamus or by the
63 appointment of a receiver in equity with power to charge
64 and collect any obligations and to apply any revenues
65 pledged in accordance with such proceedings or the
66 provisions of such security agreement. Any such security
67 agreement may provide also that in the event of default in
68 payment or the violation of any agreement contained in the
69 security agreement, it may be foreclosed by proceedings at
70 law or in equity, and may provide that any trustee under the
71 security agreement or the holder of any of the bonds secured
72 thereby may become the purchaser at any foreclosure sale,

73 if he is the highest bidder. No breach of any such agreement
74 shall impose any pecuniary liability upon the state of West
75 Virginia or the authority or any charge upon the general
76 credit of the authority or of the state or against the taxing
77 power of the state.

78 The trustee or trustees under any security agreement, or
79 any depository specified by such security agreement, may
80 be such persons or corporations as the authority shall
81 designate, notwithstanding that they may be a nonresident
82 of West Virginia or incorporated under the laws of the
83 United States or any state thereof.

84 (c) Any bonds issued hereunder and at any time
85 outstanding may at any time and from time to time be
86 refunded by the authority, by the issuance of its refunding
87 bonds in such amount as the authority may deem necessary
88 but not exceeding an amount sufficient to refund the
89 principal of the bonds to be refunded, together with any
90 unpaid interest thereon and any premiums, expenses and
91 commissions necessary to be paid in connection therewith.
92 Any such refunding may be effected whether the bonds to
93 be refunded have matured or shall thereafter mature, either
94 by sale of the refunding bonds to be refunded, or by
95 exchange of the refunding bonds for the bonds to be
96 refunded thereby: *Provided*, That the holders of any bonds
97 to be refunded shall not be compelled without their consent
98 to surrender their bonds for payment or exchange prior to
99 the date on which they are payable, or, if they are called for
100 redemption, prior to the date on which they are by their
101 terms subject to redemption. All refunding bonds issued
102 under the authority of this section shall be payable in the
103 same manner and under the same terms and conditions as
104 are herein provided for the issuance of bonds.

105 (d) The proceeds from the sale of any bonds issued under
106 authority of this section shall be applied only for the
107 purpose for which the bonds were issued: *Provided*, That
108 any premium and secured interest received in any such sale
109 shall be applied to the payment of the principal of or the
110 interest on the bonds sold: *Provided, however*, That if for
111 any reason any portion of the proceeds shall not be needed
112 for the purpose for which the bonds were issued, such
113 unneeded portion of the proceeds shall be applied to the
114 payment of the principal of or the interest on the bonds.

115 (e) The proceeds of the export development bonds shall
116 be kept in a separate fund to be known as the "Export
117 Development Bond Fund." All other moneys received by the
118 authority shall also be deposited in such fund. The treasurer
119 may, with the approval of the board of directors of the
120 authority, invest and reinvest all moneys in such fund from
121 time to time in such obligations of the United States
122 government or such other governmental or corporate
123 issuers as the treasurer, with the approval of the board of
124 directors of the authority deems appropriate. All earnings
125 upon such investment shall be added to such fund. The
126 authority is authorized to use moneys deposited in the fund
127 expressly for the purposes specified in and according to the
128 procedures established by this article.

**§5B-3-13. Bonds, income therefrom, security agreements,
financing agreements are exempt from certain
taxes.**

1 The bonds authorized pursuant to this article and the
2 income therefrom shall be exempt from all taxation in the
3 state of West Virginia except for inheritance, estate or
4 transfer taxes; and all security agreements and financing
5 agreements made pursuant to the provisions of this article
6 shall be exempt from West Virginia stamp and transfer
7 taxes.

§5B-3-14. Insurance fund; purchase of insurance by authority.

1 The authority is authorized to create an insurance fund
2 consisting solely of funds from the export development
3 bond fund. Such insurance fund shall be held in the custody
4 of one or more banks or trust companies having a principal
5 place of business in this state. The insurance fund shall be
6 held as security for the holders of bonds issued under this
7 article. It shall be governed by a trust agreement entered
8 into by the authority with the trustees. The trust agreement
9 may contain such provisions and limitations as to the
10 investment and disbursement of moneys in the insurance
11 fund, the payment of expenses of the insurance fund, the
12 appointment, resignation and discharge of trustees, the
13 delegation of enforcement and collection powers under the
14 insurance agreements to the trustee, the duties of the
15 trustees, amendments of the trust agreement and such other

16 lawful provisions and limitation as may be deemed
17 appropriate by the authority. The trust agreement may
18 pledge premiums and other moneys which may be deposited
19 in the insurance fund. Such pledge shall be valid and
20 binding from the time when the pledge is made. The
21 premiums and other moneys so pledged and thereafter
22 received by the insurance fund or by the trustees in its
23 behalf shall immediately be subject to the lien of such
24 pledge and shall be valid and binding as against all parties
25 having claims of any kind against the insurance fund,
26 irrespective of whether such parties have notice thereof.

27 The authority may also use export development bond
28 funds to purchase insurance which shall be pledged for the
29 security of the holders of any bonds issued under this
30 article. In any case in which insurance is pledged as
31 security, whether obtained through the insurance funds
32 authorized to be created under this section or purchased
33 with export development bond funds, any description of
34 such insurance shall expressly indicate the limitation of the
35 liability of the authority and that neither the credit nor
36 taxing power of the state of West Virginia or any political
37 subdivision thereof shall be available to satisfy any
38 obligations with respect thereto.

**§5B-3-15. Bonds and notes of the authority legal investments
for fiduciaries.**

1 The bonds, debentures, notes or other evidence of
2 indebtedness of the authority are hereby made securities in
3 which all public officers and bodies of the state of West
4 Virginia and all municipalities and municipal subdivisions,
5 all insurance companies and associations and other persons
6 carrying on an insurance business, all banks, bankers, trust
7 companies, savings banks, savings associations, including
8 savings and loan associations and building and loan
9 associations, investment companies and other persons
10 carrying on a banking business, all administrators,
11 guardians, executors, trustees and other fiduciaries, and all
12 other persons whatsoever who are now or who may
13 hereafter be authorized to invest in bonds or other
14 obligations of the state of West Virginia, may properly and
15 legally invest funds including capital in their control or
16 belonging to them. Notwithstanding any other provision of

17 law, the bonds, debentures, notes or other evidence of
18 indebtedness of the authority are also hereby made
19 securities which may be deposited with and may be received
20 by all public officers and bodies of this state and all
21 municipalities and municipal subdivisions for any purpose
22 for which the deposit of bonds or other obligations of this
23 state are now or may hereafter be authorized.

§5B-3-16. Exemption from disclosures of confidential information.

1 Any information submitted to or compiled by the
2 authority in connection with the authority's
3 responsibilities with respect to the identity, background,
4 finance, marketing plans, trade secrets or any other
5 commercially sensitive information of persons, firms,
6 associations, partnerships, agencies, corporations or other
7 entities, shall be confidential, except to the extent that the
8 person or entity which provided such information consents
9 to disclosure.

§5B-3-17. Provisions as cumulative.

1 Neither this article nor anything herein contained shall
2 be construed as a restriction or limitation upon any powers
3 which the authority might otherwise have under any laws of
4 this state, but shall be construed as cumulative.

§5B-3-18. Severability.

1 If for any reason any section or provision of this article
2 shall be held to be invalid or unconstitutional, such holding
3 shall not affect the validity or applicability of the
4 remainder of this article.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

1 The West Virginia labor-management advisory council,
2 heretofore created under the provisions of article one-c,
3 chapter twenty-one of this code, shall be continued and be
4 so designated as the West Virginia labor-management
5 council. The council shall consist of twenty-six members.
6 One member of the council shall be the commissioner of
7 labor, one member of the council shall be a member of the

8 economic development authority, one member of the
9 council shall be the employment security commissioner or
10 his designated representative, one member of the council
11 shall be the state superintendent of schools, one member of
12 the council shall be a member of the economic development
13 board to be selected by it annually, and one member of the
14 council shall be a member of the board of regents to be
15 selected by it annually, all of whom shall be ex officio
16 nonvoting members of the council. The other members of
17 the council shall be appointed by the governor by and with
18 the advice and consent of the senate for terms of four years
19 or until their successors have been appointed and have
20 qualified. The members of the council appointed by the
21 governor shall include one president of a state university,
22 one president of a state college or community college, and
23 two persons representing public secondary schools in the
24 state, who shall be appointed for terms of two, three and
25 four years, respectively, as designated by the governor at
26 the time of their appointment, and until their successors
27 have been appointed and have qualified. The present
28 members of the council shall continue to serve out the terms
29 to which they were appointed.

30 Vacancies shall be filled by appointment by the governor
31 for the unexpired term of the member whose office is vacant
32 and the appointment shall be made within sixty days of the
33 occurrence of the vacancy.

34 In making appointments to the council, the governor shall
35 consider names of persons recommended to him by the West
36 Virginia chamber of commerce, the West Virginia coal
37 association, the West Virginia manufacturers' association,
38 the West Virginia retailers' association, utilities, other
39 industrial groups in this state, the West Virginia labor
40 federation, the united mine workers union, the West
41 Virginia building trades council, other labor organizations
42 in the State, the institutional boards of advisors for state
43 colleges and universities, the state board of education, and
44 the West Virginia school board association. Membership
45 shall be composed of, in addition to those of the state or
46 other government agencies and educational institutions, no
47 less than eight members from industry and eight from labor.
48 The council shall elect one of its members as chairman and

49 may elect such other officers as the council may deem
50 necessary or desirable. Such persons shall serve as such for
51 one year or until their successors are elected and shall be
52 eligible for reelection.

53 The council shall meet at least four times each year and at
54 other times on call of the chairman or a majority of the
55 members. Thirteen members of the council shall constitute
56 a quorum for the transaction of business.

§5B-4-2. Objectives of the council.

1 It is the object of this article to improve labor-
2 management relations within this state, in order both to
3 improve the present convenience and welfare of the citizens
4 of the state, and to attract and encourage new and existing
5 industry in the state. To this end, the council shall act as
6 advisor and consultant to state government, and to labor
7 and management within this state, to promote better labor-
8 management relations within the state; develop and
9 encourage methods of improved communications and
10 mutual respect between labor and management; endeavor
11 to narrow ideological differences between labor and
12 management; develop and encourage innovative
13 techniques to resolve labor-management conflicts through
14 cooperative teamwork rather than confrontation; and
15 encourage both labor and management to recognize their
16 common ground and common purpose.

§5B-4-3. Powers, duties and functions of the council; annual reports.

1 On or before the first day of September, one thousand
2 nine hundred eighty-five, the council shall submit to the
3 joint committee on government and finance a preliminary
4 plan for the implementation of programs designed to
5 improve labor-management relations within the state.
6 Such plan shall include, but need not be limited to,
7 programs to:

8 (a) Conduct seminars and other programs designed to
9 promote better labor-management relations and greater
10 productivity, including the provision of training in
11 specialized skills required by management and by employee
12 representatives, in cooperation with institutions of higher
13 and secondary education within the state;

14 (b) Develop a resource network through which labor
15 and management can be made aware of available experts
16 and other resources for resolving labor-management
17 disputes and improving labor-management relations;

18 (c) Develop a method of compiling, analyzing and
19 publicizing fair and honest information about the
20 characteristics of the workforce in this state, including its
21 productivity and loyalty, in cooperation with the
22 commission on employment security, the West Virginia
23 promotion and development foundation and other state
24 agencies and educational institutions;

25 (d) Conduct and publicize, in cooperation with the West
26 Virginia promotion and development foundation, case
27 studies which identify examples of successful business
28 operations in the state with excellent labor-management
29 relations, and which document the specific characteristics
30 of labor-management relations in each such business;

31 (e) Establish forums for dialogue between labor and
32 management, including an annual state conference on labor
33 management relations;

34 (f) Hold public hearings, and solicit comment and
35 suggestions from interested parties and the public in
36 general, concerning the development of a long-term plan
37 for improving labor-management relations within the
38 state;

39 (g) Develop a long-term plan for improving labor-
40 management relations within this state;

41 (h) Submit a preliminary operation report to the joint
42 committee on government and finance by the first day of
43 September, one thousand nine hundred eighty-five, at such
44 other times as the council may find desirable, or as directed
45 by the commission or the board, which report shall reflect
46 the plan of operation of the council and contain such
47 recommendations as it shall see fit as to structure, functions
48 and financing; and

49 (i) Cooperate with other agencies, organizations and
50 institutions, both public and private, and in particular with
51 institutions of higher and secondary education within the
52 state and with the regional advisory committees established
53 by this article in performing the duties and functions of the
54 council and is authorized to enter into agreements with any
55 such agencies, organizations and institutions for the

56 purpose of carrying out the provisions of this article.
57 The council is authorized and empowered to apply for,
58 receive and utilize appropriations, gifts, bequests or grants,
59 in money or in kind, from any person, organization,
60 governmental agency or entity whatsoever to assist in
61 achieving the public purposes of this article. The council
62 may decline to receive gifts, bequests or grants from private
63 sources which are restricted in a manner which to the
64 opinion of the council would benefit either labor or
65 management over the other. All funds received by the
66 council shall be deposited with the state treasurer of West
67 Virginia and dispersed by the council to be used exclusively
68 for carrying out the provisions of this article: *Provided,*
69 That any appropriations, gifts, bequests or grants received
70 by the council with any restriction or restrictions on the use
71 thereof shall be expended by the council in accordance with
72 such restriction or restrictions.

**§5B-4-4. Regional advisory committee; composition;
functions.**

1 The council shall designate at least five regions,
2 representing the northern, southern, eastern, western and
3 central geographic areas of the state, and shall appoint a
4 regional advisory committee for each such region, to advise
5 and consult with the council and to address problems of
6 common interest within the region. The council shall
7 determine the number of members to serve on each regional
8 committee. In making appointments to the committee, the
9 council shall consider names of persons recommended by
10 business, labor and educational organizations and
11 institutions within the respective region and shall endeavor
12 to appoint persons with a commonality of interest in labor-
13 management relations. Committee members shall serve for
14 a term of four years and until their successors have been
15 appointed and have qualified, except that the members first
16 appointed shall be for two, three and four years,
17 respectively, as designated by the council at the time of
18 their appointment, and until their successors have been
19 appointed and have qualified. Vacancies shall be filled by
20 appointment by the council for the unexpired term of the
21 member whose office is vacant and the appointment shall
22 be made within sixty days of the occurrence of the vacancy.

23 Each regional advisory committee shall meet at least two
24 times each year and at other times on call of the chairman or
25 a majority of the members or as the council may direct. Each
26 committee shall elect a chairman from among its members,
27 and the chairman shall cause a summary of the proceedings
28 of each committee meeting, as well as any recommendations
29 made by the committee, to be delivered to the council.

30 The regional advisory committees shall review the plans
31 prepared by the council pursuant to section three of this
32 article, and shall make such recommendations as they deem
33 appropriate. The committees shall participate in the
34 programs established by the council, and also may establish
35 programs to improve labor-management relations within
36 their respective regions.

37 The council may enter into an agreement with a state
38 university, college or community college, county
39 governments or boards of education within each region to
40 provide space sufficient to enable the regional advisory
41 committee to carry out its functions.

**§5B-4-5. Compensation of members of council and
committees; employment of staff; expenses of
council.**

1 The labor-management council and the regional advisory
2 committees shall be supplied with necessary staff and
3 supplies within the limits of appropriation by the
4 commissioner of labor as well as funds for reimbursing each
5 member of the council and of the regional advisory
6 committees for reasonable and necessary expenses at the
7 rate of one hundred dollars per diem for each meeting
8 attended.

§5B-4-6. Duration of council.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to
3 section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the West
5 Virginia labor-management advisory council heretofore
6 established under the provisions of article one-c, chapter
7 twenty-one of this code, should be continued and
8 reestablished. Accordingly, notwithstanding the provisions
9 of section four, article ten, chapter four of this code, the

10 West Virginia labor-management advisory council shall
11 continue to exist until the first day of July, one thousand
12 nine hundred ninety-one.

**CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND
TRADE.**

**ARTICLE 1. WEST VIRGINIA AUTOMOBILE ASSISTANCE
CORPORATION.**

§5C-1-1. General provisions.

1 This chapter shall be known and may be cited as the
2 "West Virginia Basic Assistance for Industry and Trade
3 Act."

§5C-1-2. Purpose and intent.

1 The Legislature finds and declares that West Virginia's
2 economy can be rejuvenated; that bringing new industry
3 and trade to the state will serve as a catalyst for reviv~~ing~~
4 and restoring steel, aluminum, coal and other industrial
5 and commercial activities within the state; that increasing
6 such activities will form the nucleus for growing and
7 prosperous communities, offering new job opportunities
8 both in industry and trade; and that new jobs and
9 investments, higher income and profits, and rising property
10 values will support better education and superior public
11 services.

12 Therefore, it is the intent of the Legislature to create
13 authorities for the purpose of enhancing the establishment
14 or renewal of industry and trade in the state of West
15 Virginia.

§5C-1-3. Definitions.

1 For the purpose of this article:

2 (1) The term "automobile manufacturer" means a
3 business entity, the subsidiaries and affiliates, whose
4 primary business is the production and sale of motor
5 vehicles;

6 (2) The term "board of investments" means the board of
7 investments established by article six, chapter twelve of
8 this code;

9 (3) The term "borrower" means an automobile

10 manufacturer, any of its subsidiaries or affiliates, or any
11 other entity the board of investments may designate from
12 time to time which borrows funds for the benefit or use of an
13 automobile manufacturer;

14 (4) The term "corporation" means the West Virginia
15 automobile industry assistance corporation, unless the
16 context in which such term is used clearly indicates that
17 reference is made to some other corporation;

18 (5) The term "financing plan" means a plan designed to
19 meet the financing needs of an automobile manufacturer as
20 reelected in the operating plan;

21 (6) The term "fiscal year" means the fiscal year of an
22 automobile manufacturer; and

23 (7) The term "operating plan" means a document
24 detailing production, distribution, and sales plans of an
25 automobile manufacturer, together with the expenditures
26 necessary to carry out those plans (including budget and
27 cash flow projections), on an annual basis, and an
28 employment-generating plan setting forth steps to be taken
29 by the automobile manufacturer to create jobs and reduce
30 unemployment in this state.

§5C-1-4. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such invalidation shall not
4 affect the validity of the remaining portions of this article,
5 and, to this end, the provisions of this article are hereby
6 declared to be severable.

**§5C-1-5. Creation of the West Virginia automobile industry
assistance corporation.**

1 (a) For the purpose of aiding the establishment and
2 expansion of the automobile industry in this state,
3 encouraging and increasing the use of energy derived from
4 hydrocarbon sources located in the state of West Virginia,
5 for developing and maintaining properties now owned or to
6 be owned by the state of West Virginia throughout this
7 state, and in the interest of improving employment
8 opportunities in this state, there is created a body
9 corporate, denominated the "West Virginia Automobile
10 Industry Assistance Corporation," (hereinafter referred to

11 as the "corporation"). The board of directors first
12 appointed shall be deemed the incorporators, and the
13 incorporation shall be held to have been effected from the
14 date of the first meeting of the board.

15 (b) The corporation is created and established to serve a
16 public corporate purpose and to act for the public benefit
17 and as a governmental instrumentality of the state of West
18 Virginia, to act on behalf of the state and its people in
19 improving their health, welfare and prosperity.

20 (c) The corporation:

21 (1) Shall have succession in its corporate name;

22 (2) May sue and be sued in its corporate name;

23 (3) May adopt and use a corporate seal, which shall be
24 judicially noticed;

25 (4) May make contracts as herein authorized; and

26 (5) May adopt, amend and repeal bylaws.

**§5C-1-6. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.**

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "Board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.

10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty-five, shall expire as designated by the governor at
13 the time of nomination, one at the end of the second year,
14 one at the end of the fourth year and one at the end of the
15 sixth year, after the first day of July, one thousand nine
16 hundred eighty-five. A successor to a member of the board
17 shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.

21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any

23 member appointed to fill a vacancy in the board occurring
24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

27 (d) The governor may remove a director in the case of
28 incompetence, neglect of duty, gross immorality or
29 malfeasance in office, and may declare such director's
30 office vacant and appoint a person for such vacancy as
31 provided in other cases of vacancy.

32 (e) Vacancies in the board, so long as there shall be two
33 members in office, shall not impair the powers of the board
34 to execute the functions of the corporation, and two of the
35 members in office shall constitute a quorum for the
36 transaction of the business of the board.

37 (f) Each of the members of the board shall be a citizen of
38 the state of West Virginia. The compensation of each
39 member of the board shall be paid by the corporation as
40 current expenses. Members of the board shall be
41 reimbursed by the corporation for actual expenses
42 (including traveling and subsistence expenses) incurred by
43 them in the performance of the duties vested in the board by
44 this article. No member of said board shall, during his
45 continuance in office, be engaged in any other business, but
46 each member shall devote himself to the work of the
47 corporation.

48 (g) No director shall have a financial interest in any
49 automobile manufacturer or in any public-utility
50 corporation engaged in the business of distributing and
51 selling electric power or natural gas to the public nor shall
52 any member have any interest in any business that may be
53 adversely affected by the success of the corporation as a
54 distributor of water, electric power, or oil or natural gas.

**§5C-1-7. Management and control of corporation; officers;
liability.**

1 (a) The board shall direct the exercise of all the powers
2 of the corporation.

3 (b) The chairman shall be the chief executive officer of
4 the corporation, and, in his absence, the vice chairman shall
5 act as chief executive officer.

6 (c) The board shall annually elect a secretary, who need
7 not be a member of the board, to keep a record of the

8 proceedings of the board and perform such other duties as
9 may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in such
12 amount as the other members of the board of directors may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be liable personally, either jointly or severally, for any
16 debt or obligation created by the corporation.

**§5C-1-8. Officers and employees; wages of laborers and
mechanics.**

1 The board shall, without regard to the provisions of civil
2 service laws applicable to officers and employees of the
3 state of West Virginia, appoint such managers, assistant
4 managers, officers, employees, attorneys and agents as are
5 necessary for the transaction of its business, fix their
6 compensation, define their duties, and provide a system of
7 organization to fix responsibility and promote efficiency.
8 Any appointee of the board may be removed in the
9 discretion of the board. No regular officer or employee of
10 the corporation shall receive a salary in excess of that
11 received by the members of the board.

12 All contracts to which the corporation is a party and
13 which require the employment of laborers and mechanics in
14 the construction, alteration, maintenance, or repair of
15 buildings, gas transmission pipelines, electric power lines,
16 waterworks systems and waterlines, sewer systems and
17 sewage treatment and disposal systems, roads or other
18 projects shall contain a provision that not less than the
19 prevailing rate of wages for work of a similar nature
20 prevailing in the vicinity shall be paid to such laborers or
21 mechanics.

22 In the event any dispute arises as to what are the
23 prevailing rates of wages, the question shall be referred to
24 the commissioner of the department of labor for
25 determination, and his decision shall be final. In the
26 determination of such prevailing rate or rates, due regard
27 shall be given to those rates which have been secured
28 through collective agreement by representatives of
29 employers and employees.

30 Where such work as is described in the two preceding

31 paragraphs is done directly by the corporation the
32 prevailing rate of wages shall be paid in the same manner as
33 though such work had been let by contract.

§5C-1-9. Corporate powers.

1 In order to foster and expand the automobile industry in
2 this state and to encourage the widest possible use of energy
3 that can be generated from hydrocarbon sources in this
4 state and to market and provide reasonable outlets
5 therefore, the corporation is empowered and directed:

6 (a) To provide, construct, operate, maintain, and
7 improve such gas and oil pipelines, electric transmission
8 lines, substations, and facilities and structures appurtenant
9 thereto, as it finds necessary, desirable and appropriate for
10 the purpose of transmitting gas, oil and electric energy,
11 available for sale, from sources within this state to existing
12 and potential markets, and, for the purpose of interchange
13 of energy, to interconnect sources within this state with
14 either private projects, other state or federal projects, and
15 publicly owned power systems now or hereafter
16 constructed;

17 (b) To provide for the construction and maintenance of
18 streets, avenues, roads, alleys, ways, sidewalks, crosswalks
19 and other access ways to facilitate the ingress and egress to
20 industrial sites belonging to an automobile manufacturer;

21 (c) To construct, acquire, operate, maintain, and
22 improve such waterworks systems and water lines, sewer
23 systems and sewage treatment and disposal systems, or any
24 combination thereof, as it finds necessary, desirable, and
25 appropriate for the purpose of assisting an automobile
26 manufacturer in carrying out its operating plan, and to
27 acquire watersheds, water and riparian rights, plant sites,
28 rights-of-way and any and all other property and
29 appurtenances necessary, appropriate, useful, convenient
30 or incidental to such system or systems;

31 (d) To acquire, by purchase, lease, condemnation, or
32 donation, such real or personal property, or any interest
33 therein, including lands, easements, rights-of-way,
34 franchises, oil or gas, pipelines, electric transmission lines,
35 substations and facilities and structures appurtenant
36 thereto, waterworks systems and water lines, and sewer
37 systems and sewage treatment and disposal systems, as the

38 board finds necessary and appropriate to carry out the
39 purposes of this article. Title to all property and property
40 rights acquired by the corporation shall be taken in the
41 name of the corporation.

42 (e) To acquire any property or property rights,
43 including patent rights, which in the opinion of the board
44 are necessary to carry out the purposes of this article, by
45 purchase, lease, donation, or by the exercise of the right of
46 eminent domain and to institute condemnation proceedings
47 therefor in the same manner as is provided by law for the
48 condemnation of real estate.

49 (f) To sell, lease or otherwise dispose of such personal
50 property as in the opinion of the board is not required for
51 the purposes of this article and such real property and
52 interests in land acquired in connection with construction
53 or operation of gas and oil pipelines, electric transmission
54 lines, substations, roads and facilities and other structures,
55 waterworks systems and water lines, and sewer systems and
56 sewage treatment and disposal systems as in the opinion of
57 the board are not required for the purposes of this article.

58 (g) To negotiate and enter into such contracts,
59 agreements, and arrangements as it shall find necessary and
60 appropriate to carry out the purposes of this article.

61 (h) To accept appropriations, gifts, grants, bequests and
62 devises, and to dispose of the same to carry out its corporate
63 purposes;

64 (i) To invest any funds not required for immediate
65 disbursement in any of the following securities:

66 (1) Direct obligations of or obligations guaranteed by
67 the United States of America;

68 (2) Bonds, debentures, notes or other evidences of
69 indebtedness issued by any of the following agencies: banks
70 for cooperatives; federal intermediate credit banks; federal
71 home loan bank system; export-import bank of the United
72 States; federal land banks; the federal national mortgage
73 association or the government national mortgage
74 association;

75 (3) Bonds issued by public agencies or municipalities
76 and fully secured as to the payment of both principal and
77 interest by a pledge of annual contributions under an
78 annual contributions contract or contracts with the United
79 States of America; or temporary notes issued by public

80 agencies or municipalities or preliminary loan notes issued
81 by public agencies or municipalities in each case, fully
82 secured as to the payment of both principal and interest by a
83 requisition or payment agreement with the United States of
84 America;

85 (4) Certificates of deposit secured by obligations of the
86 United States of America;

87 (5) Direct obligations of or obligations guaranteed by
88 the state of West Virginia;

89 (6) Direct and general obligations of any other state
90 within the territorial United States, to the payment of the
91 principal of and interest on which the full faith and credit of
92 such state is pledged: *Provided*, That at the time of their
93 purchases, such obligations are rated in either of the two
94 highest rating categories by a nationally recognized bond-
95 rating agency: and

96 (7) Any fixed interest bond, note or debenture of any
97 corporation organized and operating within the United
98 States: *Provided*, That such corporation shall have a
99 minimum net worth of fifteen million dollars and its
100 securities or its parent corporation's securities are listed on
101 one or more of the national stock exchanges: *Provided*,
102 *however*, That (1) such corporation has earned a profit in
103 eight of the preceding ten fiscal years as reflected in its
104 statements, and (2) such corporation has not defaulted in
105 the payment of principal or interest on any of the
106 outstanding funded indebtedness during its preceding ten
107 fiscal years, and (3) the bonds, notes or debentures of such
108 corporation to be purchased are rated "AA" or the
109 equivalent thereof or better than "AA" or the equivalent
110 thereof by at least two or more nationally recognized rating
111 services such as Standard and Poor's, Dun & Bradstreet or
112 Moody's;

113 (j) To procure insurance against any loss in connection
114 with its property in such amounts, and from such insurers,
115 as may be necessary or desirable;

116 (k) To make and publish such rules and regulations as
117 are necessary to effectuate its corporate purpose;

118 (l) To borrow money to carry out and effectuate its
119 corporate purpose and to issue notes as evidence of any such
120 borrowing in such principal amounts and upon such terms
121 as shall be necessary to provide sufficient funds for

122 achieving its corporate purpose, except that no notes shall
123 be issued to mature more than ten years from date of
124 issuance;

125 (m) To issue renewal notes, except that no such renewal
126 notes shall be issued to mature more than ten years from
127 date of issuance of the notes renewed;

128 (n) To apply the proceeds from the sale of renewal notes
129 to the purchase, redemption or payment of the notes to be
130 refunded; and

131 (o) To make proper application to the West Virginia
132 economic development authority for the issuance of bonds,
133 in accordance with the provisions of article fifteen, chapter
134 thirty-one of this code.

135 The corporation shall have such additional powers as
136 may be necessary or appropriate for the exercise of the
137 powers herein conferred.

§5C-1-10. Transfer of state property to corporation.

1 The governor is authorized to provide for the transfer to
2 the corporation of the use, possession and control of such
3 real or personal property of the state of West Virginia as he
4 may from time to time deem necessary and proper for the
5 purposes of the corporation as herein stated.

**§5C-1-11. Principal office of the corporation; account books;
directors' oath of office.**

1 (a) The corporation shall maintain its principal office in
2 the immediate vicinity of Charleston, West Virginia or upon
3 the site of any facility.

4 (b) The corporation shall at all times maintain complete
5 and accurate books of accounts.

6 (c) Each member of the board, before entering upon the
7 duties of his office, shall subscribe to an oath or affirmation
8 to support the constitution of the state of West Virginia and
9 to faithfully and impartially perform the duties imposed
10 upon him by this article.

**§5C-1-12. West Virginia board of investments to act as board of
investments for purposes of this article; powers.**

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions of
3 article six, chapter twelve of this code, shall be ex officio a

4 board of investments for public employees retirement
5 system funds as they are made available for investment in
6 accordance with the provisions of this article, and as such,
7 the board of investments may exercise all of the powers and
8 functions granted to it pursuant to the provisions of said
9 article six in carrying out the duties assigned to it under the
10 provisions of this article.

§5C-1-13. Authority of the board of investments.

1 (a) Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities, and other assets
4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

8 (1) That there exists an employment-generating plan
9 which:

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility, in this state, to
20 produce, distribute, and sell automobiles, and that by
21 meeting such need employment will be increased in the
22 state;

23 (3) That the borrower has submitted to the board of
24 investments a satisfactory operating plan for the 1985-1986
25 fiscal year and the next succeeding two fiscal years
26 demonstrating the ability of the borrower to employ not less
27 than an additional one thousand full-time employees in this
28 state in the furnishing of goods and services, and after the
29 thirty-first day of December, one thousand nine hundred
30 eighty-eight, to continue to maintain such increased level of
31 employment without additional loans under the provisions
32 of this article;

33 (4) That the board of investments has received such

34 assurances as it shall require that the operating plan is
35 realistic and feasible;

36 (5) That the borrower has submitted to the board of
37 investments a satisfactory financing plan which meets the
38 financial needs of the borrower as reflected in the operating
39 plan for the period covered by such plan;

40 (6) That the board of investments has received adequate
41 assurances regarding the availability of all financing, both
42 public and private, contemplated by the financing plan and
43 that such financing is adequate to meet the borrower's
44 projected financial needs during the period covered by the
45 financing plan;

46 (7) That none of the proceeds of a loan made under the
47 provisions of this article will be used to repay credit
48 extended or committed prior to the date the loan is made
49 under the provisions of this article; and

50 (8) That the financing plan submitted under subdivision
51 (5) of this subsection (a) provides that expenditures under
52 the financing plan will reduce unemployment in this state.

§5C-1-14. Requirements of loan.

1 (a) A loan may be made under the provisions of this
2 article when such loan is based upon the criteria set forth in
3 section sixteen of this article. In addition, the terms of any
4 such loan shall provide that the loan is made upon the
5 following findings of the board of investments:

6 (1) That the prospective earning power of the borrower,
7 together with the character and value of any security
8 pledged, furnish reasonable assurance of repayment of the
9 loan in accordance with its terms;

10 (2) That the loan will bear interest at a rate determined
11 by the board of investments to be reasonable, taking into
12 account the current average yield on outstanding
13 investments of the board of investments of the pension
14 funds in the consolidated pension fund established under
15 the provisions of section eight, article six, chapter twelve of
16 this code;

17 (3) That the corporation has agreed for as long as unpaid
18 balances of principal and interest are outstanding on a loan
19 issued under this article;

20 (A) To have prepared and submitted on or before the
21 thirtieth day of preceding each fiscal year beginning after

22 the thirty-first day of December, one thousand nine
23 hundred eighty-six, a revised operating plan and financial
24 plan which cover the two-year period commencing with
25 such fiscal year and which show compliance with the
26 requirements of section sixteen of this article, and

27 (B) To prepare and deliver to the board of investments
28 within one hundred twenty days following the close of each
29 fiscal year, an analysis reconciling the borrower's actual
30 performance in generating employment in this state with
31 the projected employment for such year as set forth in the
32 operating plan and the financial plan in effect at the start of
33 such fiscal year.

34 (b) The borrower has agreed to pay such loan fees as
35 may be prescribed by the board of investments from time to
36 time. The board of investments shall prescribe and collect
37 no less frequently than annually a loan fee in connection
38 with each loan made under the provisions of this article.
39 Such fee shall be sufficient to compensate the board of
40 investments for all of the administrative expenses of the
41 board of investments related to the loan, but in no case shall
42 such fee be less than one half of one percent per annum of
43 the outstanding principal amount of the loan computed
44 daily. All amounts collected by the board of investments
45 pursuant to this subsection (b) shall be deposited in the
46 state treasury as general revenue.

§5C-1-15. Limitations on loan authority.

1 (a) The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed two hundred fifty million dollars in the
4 aggregate principal amount outstanding.

§5C-1-16. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article shall
2 be payable in full not later than twenty years from the date
3 the loan is made.

4 (b) The board of investments shall require security for
5 the loans to be made under this article at the time the
6 commitment is made. Any commitment to make a loan
7 under the provisions of this article shall contain all of the
8 affirmative and negative covenants and other protective
9 provisions that the board of investments determines are
10 appropriate.

§5C-1-17. Audits; audit reports.

1 (a) The accounts of a borrower under this article shall be
2 audited annually in accordance with generally accepted
3 auditing standards by independent certified public
4 accountants or independent licensed public accountants,
5 certified or licensed by a regulatory authority of this state
6 or a sister state.

7 (b) At any time a request for an application for a loan
8 under this article is pending or a loan under this article is
9 outstanding, the board of investments is authorized to
10 request a report of such independent audit. The report shall
11 set forth the scope of the audit and include such statements
12 as are necessary to present fairly the borrower's assets and
13 liabilities, surplus or deficit with an analysis of changes
14 therein during the year, supplemented in reasonable detail
15 by a statement of the corporation's income and expenses
16 during the year, together with the independent auditor's
17 opinion of those statements.

18 (c) No loan may be made under this article unless and
19 until the borrower agrees, in writing, to provide the board
20 of investments with such reports of independent audits as
21 may be requested under the provisions of subsection (b) of
22 this section.

§5C-1-18. Enforcement of rights accruing to the state.

1 The board of investments shall take such action as may be
2 appropriate to enforce any right accruing to the state or any
3 officer or agency thereof as a result of the making of a loan
4 under the provisions of this article.

§5C-1-19. Tax credit for borrowers.

1 The borrower, as defined in this article, may be eligible
2 for any tax credits provided for in articles thirteen-c,
3 thirteen-d and thirteen-e, chapter eleven of this code.

§5C-1-20. Reports to the Legislature.

1 The board of investments shall submit to the Legislature
2 annually a full report of its activities under this article
3 during fiscal years 1985-1986 and 1986-1987, and annually
4 thereafter so long as any loan guaranteed under this article
5 is outstanding. The report for 1987 shall include an
6 evaluation of the long-term employment implications of the

7 loan program created under the provisions of this article,
8 with findings, conclusions, and recommendations for
9 legislative and administrative actions considered
10 appropriate to future loans under this article or under
11 similar loan programs which might be foreseen.

§5C-1-21. Termination.

1 The authority of the board of investments to make loans
2 under this article expires on the thirty-first day of
3 December, one thousand nine hundred eighty-seven.

**ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS
DEVELOPMENT CORPORATION.**

§5C-2-1. Definitions.

1 For the purposes of this chapter:

2 (1) The term "enterprise" means a business entity which
3 is or proposes to be engaged in this state in any commercial
4 activity for profit. The entity may be owned, operated,
5 controlled or under the management of a person,
6 partnership, corporation, community-based development
7 organization or council, local commerce group, employee
8 stock ownership plan, pension or profit-sharing plan or
9 trust, a group of participating employees who desire to own
10 an entity which does not presently exist, or any similar
11 entity or organization;

12 (2) The term "board of investments" means the board of
13 investments established by article six, chapter twelve of
14 this code;

15 (3) The term "borrower" means an enterprise, any of its
16 subsidiaries or affiliates, or any other entity the board of
17 investments may designate from time to time which
18 borrows funds for the benefit or use of an enterprise;

19 (4) The term "corporation" means the West Virginia
20 industrial and trade jobs development corporation, unless
21 the context in which such term is used clearly indicates that
22 reference is made to some other corporation;

23 (5) The term "financing plan" means a plan designed to
24 meet the financing needs of an enterprise as reflected in the
25 operating plan;

26 (6) The term "fiscal year" means the fiscal year of an
27 enterprise;

28 (7) The term "operating plan" means a document
29 detailing production, distribution, and sales plans of an
30 enterprise, together with the expenditures necessary to
31 carry out those plans (including budget and cash flow
32 projections) on an annual basis, and an employment-
33 generating plan setting forth steps to be taken by the
34 enterprise to create jobs and reduce unemployment in this
35 state;

36 (8) The term "investment" means an investment by the
37 corporation in qualified securities of an enterprise to
38 provide initial capital to the enterprise;

39 (9) The term "primary employment" means work which
40 pays at least the prevailing wage in the industry, offers
41 adequate fringe benefits, including health insurance, and is
42 not seasonal or part-time;

43 (10) The term "qualified security" means any note,
44 bond, debenture, convertible debenture, evidence of
45 indebtedness, certificate of deposit for a security,
46 certificate of interest or participation in a patent,
47 trademark, or other intangible property or application
48 therefor, or in general, any interest or instrument
49 commonly known as a security or warrant or right to
50 subscribe to or purchase any of the foregoing, but shall not
51 include any security the ownership of which is prohibited
52 by section six, article ten of the Constitution of the state of
53 West Virginia;

54 (11) The term "initial capital" shall mean financing that
55 is provided for the development, refinement, and
56 commercialization of a product, process or service, and
57 other initial working capital needs, including formation,
58 organization, promotion, employment, employment
59 training, and similar expenditures incident to the start-up
60 of an enterprise; and

61 (12) The term "development project" means a
62 commercial or industrial project and all of the assets
63 reasonably and necessarily required for its operation.

**§5C-2-2. Creation of the West Virginia industrial and trade
jobs development corporation.**

1 (a) For the purpose of aiding the establishment and
2 expansion of industry and trade in this state, encouraging
3 and increasing the use of energy derived from hydrocarbon

4 sources located in the state of West Virginia, for developing
5 and maintaining properties now owned or to be owned by
6 the state of West Virginia throughout this state, and in the
7 interest of improving employment opportunities in this
8 state, there is created a body corporate, denominated the
9 “West Virginia Industrial and Trade Jobs Development
10 Corporation” (hereinafter referred to as the “corporation”).
11 The board of directors first appointed shall be deemed the
12 incorporators, and the incorporation shall be held to have
13 been effected from the date of the first meeting of the board.
14 (b) The corporation is created and established to serve a
15 public corporate purpose and to act for the public benefit
16 and as a governmental instrumentality of the state of West
17 Virginia, to act on behalf of the state and its people in
18 improving their health, welfare and prosperity.

**§5C-2-3. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.**

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the “board”) shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.
10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty-five, shall expire as designated by the governor at
13 the time of nomination, one at the end of the second year,
14 one at the end of the fourth year, and one at the end of the
15 sixth year, after the first day of July, one thousand nine
16 hundred eighty-five. A successor to a member of the board
17 shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.
21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any
23 member appointed to fill a vacancy in the board occurring

24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

27 (d) The governor may remove a director in the case of
28 incompetence, neglect of duty, gross immorality or
29 malfeasance in office, and may declare such director's
30 office vacant and appoint a person for such vacancy as
31 provided in other cases of vacancy.

32 (e) Vacancies in the board, so long as there shall be two
33 members in office, shall not impair the powers of the board
34 to execute the functions of the corporation, and two of the
35 members in office shall constitute a quorum for the
36 transaction of the business of the board.

37 (f) Each of the members of the board shall be a citizen of
38 the state of West Virginia. The compensation of each
39 member of the board shall be paid by the corporation as
40 current expenses. Members of the board shall be
41 reimbursed by the corporation for actual expenses
42 (including traveling and subsistence expenses) incurred by
43 them in the performance of the duties vested in the board by
44 this article. No member of said board shall, during his
45 continuance in office, be engaged in any other business, but
46 each member shall devote himself to the work of the
47 corporation.

48 (g) No officer, member or employee of the corporation
49 shall be financially interested, directly or indirectly, in any
50 contract of any person with the corporation, or in the sale of
51 any property, real or personal to or from the corporation.
52 This section does not apply to contracts or purchases of
53 property, real or personal, between the corporation and any
54 governmental agency. Any officer, member or employee of
55 the corporation who has such financial interest in a
56 contract or sale of property prohibited hereby, shall be
57 guilty of a misdemeanor, and, upon conviction thereof, shall
58 be fined not more than one thousand dollars, or imprisoned
59 in the county jail not more than one year, or both fined and
60 imprisoned.

**§5C-2-4. Management and control of corporation; officers;
liability.**

1 (a) The board shall direct the exercise of all the powers
2 of the corporation.

3 (b) The chairman shall be the chief executive officer of
4 the corporation, and, in his absence, the vice chairman shall
5 act as chief executive officer.

6 (c) The board shall annually elect a secretary, who need
7 not be a member of the board, to keep a record of the
8 proceedings of the board and perform such other duties as
9 may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in such
12 amount as the other members of the board of directors may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be liable personally, either jointly or severally, for any
16 debt or obligation created by the corporation.

§5C-2-5. Officers and employees; wages of laborers and mechanics.

1 The board shall, without regard to the provisions of civil
2 service laws applicable to officers and employees of the
3 state of West Virginia, appoint such managers, assistant
4 managers, officers, employees, attorneys and agents as are
5 necessary for the transaction of its business, fix their
6 compensation, define their duties and provide a system of
7 organization to fix responsibility and promote efficiency.
8 Any appointee of the board may be removed in the
9 discretion of the board. No regular officer or employee of
10 the corporation shall receive a salary in excess of that
11 received by the members of the board.

12 All contracts to which the corporation is a party and
13 which require the employment of laborers and mechanics in
14 the construction, alteration, maintenance, or repair of
15 buildings, gas transmission pipelines, electric power lines,
16 waterworks systems and waterlines, sewer systems and
17 sewage treatment and disposal systems, roads or other
18 projects shall contain a provision that not less than the
19 prevailing rate of wages for work of a similar nature
20 prevailing in the vicinity shall be paid to such laborers or
21 mechanics.

22 In the event any dispute arises as to what are the
23 prevailing rates of wages, the question shall be referred to
24 the commissioner of the department of labor for
25 determination, and his decision shall be final. In the

26 determination of such prevailing rate or rates, due regard
27 shall be given to those rates which have been secured
28 through collective agreement by representatives of
29 employers and employees.

30 Where such work as is described in the two preceding
31 paragraphs is done directly by the corporation the
32 prevailing rate of wages shall be paid in the same manner as
33 though such work had been let by contract.

§5C-2-6. Corporate powers.

1 In order to foster and expand industry and trade in this
2 state, the corporation is empowered and directed:

3 (a) Make, amend and repeal bylaws; and promulgate
4 rules and regulations in accordance with the provisions of
5 chapter twenty-nine-a of this code;

6 (b) Sue and be sued in its corporate name;

7 (c) Adopt and use a corporate seal;

8 (d) Make contracts, and execute all instruments
9 necessary or convenient for the carrying on of its business;

10 (e) Acquire, own, hold, dispose of and encumber
11 personal property of any nature, or any interest therein;

12 (f) Enter into agreements or other transactions with any
13 federal, state or municipal agency;

14 (g) Acquire real property, or an interest therein, by
15 purchase or foreclosure, where such acquisition is
16 necessary or appropriate to protect or secure any
17 investment or loan in which the corporation has an interest;
18 to sell, transfer and convey any such property to a buyer and
19 in the event such sale, transfer or conveyance cannot be
20 effected with reasonable promptness or at a reasonable
21 price, to lease such property to a tenant;

22 (h) Invest any funds held in reserves or sinking funds, or
23 any funds not required for immediate disbursement, in such
24 investments as may be lawful for fiduciaries in the state;

25 (i) Borrow money and give guarantees, provided that
26 the indebtedness and other obligations of the corporation
27 shall be payable solely out of its own resources;

28 (j) Appoint officers, employees, consultants, agents and
29 advisors and prescribe their duties and fix compensation
30 within the limitations provided by law;

31 (k) Appear in its own behalf before boards,

32 commissions, departments or other agencies of municipal,
33 state or federal government;

34 (l) Procure insurance against any losses in connection
35 with its property in such amounts, and from such insurers,
36 as may be necessary or desirable;

37 (m) Consent, subject to the provisions of any contract
38 with noteholders, whenever it deems it necessary or
39 desirable in the fulfillment of the purposes of this article, to
40 the modification, with the respect to rate of interest, time of
41 payment of any installment of principal or interest, or any
42 other terms of any contract or agreement of any kind to
43 which the corporation is a party;

44 (n) To accept any and all donations, grants, bequests
45 and devises, conditional or otherwise, of money, property,
46 service or other things of value which may be received from
47 the United States or any agency thereof, any governmental
48 agency or any institution, person, firm or corporation,
49 public or private, to be held, used or applied for any or all of
50 the purposes specified in this article, in accordance with the
51 terms and conditions of any such grant. Receipt of each such
52 donation or grant shall be detailed in the annual report of
53 the corporation. Such report shall include the identity of
54 the donor or lender, the nature of the transaction and any
55 conditions attaching thereto;

56 (o) Buy, hold and sell qualified securities;

57 (p) Finance, conduct or cooperate in financing or
58 conducting technological, business, financial or other
59 investigations which are related to or likely to lead to
60 business and economic development by making and
61 entering into contracts and other appropriate
62 arrangements, including the provision of grants, loans and
63 other forms of assistance;

64 (q) Solicit, study and assist in the preparation of
65 business plans and proposals of new or established
66 businesses suitable for support by the corporation;

67 (r) Prepare, publish and distribute, with or without
68 charge as the corporation may determine, such technical
69 studies, reports, bulletins and other materials as it deems
70 appropriate, subject only to the maintenance and respect
71 for confidentiality of client proprietary information;

72 (s) Organize, conduct, sponsor or cooperate in and assist
73 the conduct of special institutes, conferences,

74 demonstrations and studies relating to the stimulation and
75 formation of industry and trade endeavors;

76 (t) Provide and pay for such advisory services and
77 technical assistance as may be necessary or desirable to
78 carry out the purposes of this article;

79 (u) Exercise any other powers of a corporation
80 organized under article one, chapter thirty-one of this code;

81 (v) Cooperate with state and federal agencies in efforts
82 to promote the expansion of commercial and industrial
83 development in this state.

84 (w) Request the issuance of revenue bonds by the
85 economic development authority, payable solely from
86 revenues, to pay the cost or finance in whole or in part
87 enterprises or development projects.

88 (x) Make, upon proper application of any local
89 development agency, loans to such agency for development
90 projects and to provide for the repayment and redposit of
91 such loans in the manner provided in this article.

92 (y) Take title by foreclosure to any enterprise or
93 development project where acquisition is necessary to
94 protect any investment or financing previously made by the
95 corporation, and to sell, transfer and convey such enterprise
96 or project, or any part thereof, to any responsible buyer. In
97 the event such sale, transfer, and conveyance cannot be
98 effected with reasonable promptness, the authority may, in
99 order to minimize financial losses and sustain employment,
100 lease the project to a responsible tenant. The corporation
101 may lease, sublease, or engage in similar financial
102 transactions with any enterprise or project, under the
103 conditions and for the purposes cited in this section.

104 (z) Participate in any reorganization proceeding
105 pending pursuant to the United States Code (being the act
106 of Congress, establishing a uniform system of bankruptcy
107 throughout the United States, as amended) or in any
108 receivership proceeding in a state or federal court for the
109 reorganization or liquidation of any enterprise or
110 development project. The corporation may file its claim
111 against any enterprise or development project in any of the
112 foregoing proceedings, vote upon any question pending
113 therein which requires the approval of the creditors
114 participating in any reorganization proceeding or
115 receivership, exchange any evidence of such indebtedness

116 for any property, security or evidence of indebtedness
117 offered as a part of the reorganization of such responsible
118 tenant or of any other entity formed to acquire the assets
119 thereof and may compromise or reduce the amount of any
120 indebtedness owing to it as a part of any such
121 reorganization.

122 (aa) Sell security interests in the loan portfolio of the
123 corporation. Such security interests shall be evidenced by
124 instruments issued by the corporation. Proceeds from the
125 sale of security interests may be issued in the same manner
126 and for the same purposes as note revenues.

127 (bb) Procure insurance against any losses in connection
128 with its property, operations or assets in such amounts and
129 from such insurers as the corporation deems desirable; *and*

130 (cc) Take and hold security interests for investments
131 and financings on a non-recourse basis.

§5C-2-7. Investment fund.

1 There is hereby established an investment fund to which
2 shall be credited any state appropriations or other moneys
3 made available to the fund.

4 The corporation shall hold the investment fund in an
5 account or accounts separate from other funds. The
6 corporation shall invest and reinvest the fund and the
7 income thereof, temporarily pending use for the purposes of
8 this article, in the purchase of such securities as may be
9 lawful investments for fiduciaries in the state.

10 All funds may be used to pay for the proper general
11 expenses of the corporation.

12 Unless otherwise specified, all moneys of the corporation
13 from whatever source derived shall be paid to the treasurer
14 of the corporation.

15 Funds in said accounts shall be paid out on the warrant or
16 other order of the treasurer of the corporation and other
17 person or persons as the board may authorize to execute
18 such warrants or order.

19 The fund shall operate as a revolving fund whereby all
20 appropriations and payments thereto may be applied and
21 reapplied by the corporation for the purposes of this article.
22 The corporation shall requisition from the fund such
23 amounts as are necessary to accomplish the purposes of this
24 article.

25 Whenever the corporation determines that the balance in
26 the fund is in excess of its immediate requirements, it may
27 request that such excess be invested until needed. In such
28 case such excess shall be invested in a manner consistent
29 with the investment of temporary state funds. Interest
30 earned on any money invested pursuant to this section shall
31 be credited to the fund.

32 If the corporation determines that funds held in the fund
33 are in excess of the amount needed to accomplish the
34 purposes of this article, it shall take such action as is
35 necessary to release such excess and transfer it to the
36 general fund of the state treasury.

37 The fund shall consist of the following:

38 (a) Moneys collected and deposited in the state treasury
39 which are specifically designated by acts of the Legislature
40 for inclusion into the fund;

41 (b) Contributions, grants and gifts from any source,
42 both public and private, which may be used by the
43 corporation for any project or projects;

44 (c) All interest earned on investments made by the state
45 from moneys deposited in the fund;

46 (d) The proceeds from the issuance of any revenue bonds
47 issued by the economic development authority in
48 accordance with the provisions of article fifteen, chapter
49 thirty-one of this code; and

50 (e) The proceeds, repayments, lease or rental receipts,
51 sale proceeds, liquidation proceeds, and any other receipts
52 from investments and financings made pursuant to the
53 authority granted by this article.

§5C-2-8. Investment in qualified securities.

1 (1) The corporation may invest in qualified securities
2 issued by an enterprise only after:

3 (a) Receipt of an application from the enterprise which
4 contains a business plan including a description of the
5 enterprise and its management, product, or service and
6 market, a statement of the amount, timing and projected
7 use of the capital required, a statement of the potential
8 economic impact of the enterprise, including the number,
9 location and types of jobs expected to be created, and such
10 other information as the board shall request; and

11 (b) Approval of the investment by the board after the

12 board shall find, based upon the application submitted by
13 the enterprise and such additional investigation as the
14 corporation shall make, and incorporate in its minutes that:

15 (1) The proceeds of the investment will be used to cover
16 the initial capital needs of the enterprise as hereinafter
17 authorized;

18 (2) The enterprise has a reasonable chance of success;

19 (3) The corporation's participation is necessary to the
20 success of the enterprise because funding for the enterprise
21 is unavailable in the traditional capital markets, or because
22 funding has been offered on terms that would substantially
23 hinder the success of the enterprise;

24 (4) The enterprise has reasonable potential to create a
25 substantial amount of primary employment within the state
26 and this employment, so far as feasible, offers employment
27 opportunities to unskilled and semiskilled individuals;

28 (5) The founders or owners of the enterprise have
29 already made or are prepared to make a financial or time
30 commitment, or both, to the enterprise;

31 (6) The securities to be purchased are qualified
32 securities;

33 (7) There is a reasonable possibility that the corporation
34 will recoup at least its initial investment; and

35 (8) Binding commitments have been made to the
36 corporation by the enterprise for adequate reporting of
37 financial data to the corporation which shall include a
38 requirement for an annual or other periodic audit of the
39 books of the enterprise, by an independent certified public
40 accountant, and for such control on the part of the
41 corporation as the board shall consider prudent over the
42 management of the enterprise, so as to protect the
43 investment of the corporation including, in the discretion of
44 the board and without limitation, right of access to
45 financial and other records of the enterprise; *and*

46 (9) A reasonable effort has been made to find an investor
47 to make an investment in the enterprise as a coventure, and
48 that such effort was unsuccessful.

49 Such findings when made by the board shall be conclusive.

50 (2) The corporation shall not make investments in
51 qualified securities issued by enterprises in excess of the
52 following limits:

53 (a) Not more than one million dollars shall be invested

54 in the securities of any one enterprise; except that not more
55 than a total of two million dollars may be invested in the
56 securities of any one enterprise if the board shall find, after
57 the initial investment by the corporation, that additional
58 investments in such enterprise are required to protect the
59 initial investment of the corporation and the other findings
60 set forth above are made as to the additional investment:
61 *Provided*, That the board may, by rule adopted in
62 accordance with the provisions of chapter twenty-nine-a of
63 this code, determine that a higher amount is necessary and
64 prudent, and may, after hearing, determine that a higher
65 amount is necessary and prudent in a particular situation.

66 (b) The corporation shall not invest in securities
67 representing more than ninety-nine percent of the market
68 value of the enterprise at the time of investment by the
69 corporation, after giving effect to the conversion of all
70 outstanding convertible securities of the enterprise.

71 (3) Any investment, or proposed investment, by the
72 corporation, and by all others involved in the enterprise,
73 shall be exempt transactions under the provisions of section
74 four hundred two, article four, chapter thirty-two, of this
75 code.

§5C-2-9. Financing of development projects.

1 The corporation may finance development projects, only
2 after:

3 (a) Receipt of an application, except that if an
4 application has been received under section eight of this
5 article no new application need be received at the discretion
6 of the board, from the enterprise which contains a business
7 plan including a description of the enterprise and its
8 management, product or service and market, a description
9 of the development project, a statement of the amount,
10 timing and projected use of the funds, a statement of the
11 potential economic impact of the development project,
12 including the number, location and types of jobs expected
13 to be created, and other information as the board shall
14 request;

15 (b) Approval of the financing by the board after the
16 board shall find based upon the application submitted by
17 the enterprise and such additional investigation as the
18 corporation shall make, and incorporate in its minutes that:

19 (1) The proceeds of the financing will be used for
20 development of the project;

21 (2) The development project has a reasonable chance of
22 success;

23 (3) The corporation's participation is necessary to the
24 success of the enterprise because financing for the
25 development project is unavailable in the traditional
26 capital markets, or because financing has been offered on
27 terms that would substantially hinder the success of the
28 development project;

29 (4) The development project has reasonable potential to
30 create a substantial amount of primary employment within
31 the state and this employment, so far as feasible, offers
32 employment opportunities to unskilled and semiskilled
33 individuals;

34 (5) The founders of the development project have
35 already made or are prepared to make a financial or time
36 commitment, or both, to the project;

37 (6) Binding commitments have been made to the
38 corporation by the project for adequate reporting of
39 financial data to the corporation, which shall include a
40 requirement for an annual or other periodic audit of the
41 books of the project by an independent certified public
42 accountant, and for such control on the part of the
43 corporation as the board shall consider prudent over the
44 management of the project, so as to protect the investment
45 of the corporation including, in the discretion of the board
46 and without limitation, right of access to financial and
47 other records of the project; *and*

48 (7) A reasonable effort has been made to find other
49 financing for the development project and that such effort
50 was unsuccessful.

51 Such findings when made by the board shall be
52 conclusive.

53 The corporation may not finance development projects in
54 excess of the following limits:

55 (a) one hundred percent of development project costs;

56 (b) ten million dollars for any one development project:

57 except that after two years of continual operations, the
58 corporation may finance a total of twenty million dollars of
59 development costs for any one project where the board finds
60 that the development project warrants expansion beyond

61 the original project limits: *Provided*, That the board may,
62 by rule adopted in accordance with the provisions of
63 chapter twenty-nine-a of this code, determine that a higher
64 amount is necessary and prudent.

65 The corporation shall utilize appropriate financing
66 documents and notes in making financing arrangements
67 and shall acquire appropriate security interests, deeds of
68 trust, collateral security agreements, senior and junior
69 security arrangements, and other necessary lien-holder
70 interests, not necessitating recourse financing.

71 Any such financing, or proposed financing, by the
72 corporation, and by all others involved in the development
73 project, shall be exempt transactions under the provisions
74 of section four hundred two, article four, chapter thirty-two
75 of this code.

§5C-2-10. Transfer of state property to corporation.

1 The governor is authorized to provide for the transfer to
2 the corporation of the use, possession, and control of such
3 real of personal property of the state of West Virginia as he
4 may from time to time deem necessary and proper for the
5 purposes of the corporation as herein stated.

§5C-2-11. Principal office of the corporation; account books; directors' oath of office.

1 (a) The corporation shall maintain its principal office in
2 the immediate vicinity of Charleston, West Virginia or upon
3 the site of any facility.

4 (b) The corporation shall at all times maintain complete
5 and accurate books of accounts.

6 (c) Each member of the board, before entering upon the
7 duties of his office, shall subscribe to an oath or affirmation
8 to support the constitution of the state of West Virginia and
9 to faithfully and impartially perform the duties imposed
10 upon him by this article.

§5C-2-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions of
3 article six, chapter twelve of this Code, shall be ex officio a
4 board of investments for public employees retirement

5 system funds as they are made available for investment in
6 accordance with the provisions of this article, and as such,
7 the board of investments may exercise all of the powers and
8 functions granted to it pursuant to the provisions of said
9 article six in carrying out the duties assigned to it under the
10 provisions of this article.

§5C-2-13. Authority of the board of investments.

1 (a) Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities, and other assets
4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

8 (1) That there exists an employment-generating plan
9 which:

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility, in this state,
20 and that by meeting such need employment will be
21 increased in the state;

22 (3) That the borrower has submitted to the board of
23 investments a satisfactory operating plan for the 1985-1986
24 fiscal year and the next succeeding two fiscal years
25 demonstrating the ability of the borrower to generate
26 additional employment in this state in the furnishing of
27 goods and services, and after the thirty-first day of
28 December, one thousand nine hundred eighty-eight, to
29 continue to maintain such increased level of employment
30 without additional loans under the provisions of this
31 article; and

32 (4) That the board of investments has received such
33 assurances as it shall require that the operating plan is
34 realistic and feasible;

35 (5) That the borrower has submitted to the board of
36 investments a satisfactory financing plan which meets the
37 financial needs of the borrower as reflected in the operating
38 plan for the period covered by such plan;

39 (6) That the board of investments has received adequate
40 assurances regarding the availability of all financing, both
41 public and private, contemplated by the financing plan and
42 that such financing is adequate to meet the borrower's
43 projected financial needs during the period covered by the
44 financing plan;

45 (7) That none of the proceeds of a loan made under the
46 provisions of this article will be used to repay credit
47 extended or committed prior to the date the loan is made
48 under the provisions of this article; *and*

49 (8) That the financing plan submitted under subdivision
50 (5) of this subsection (a) provides that expenditures under
51 the financing plan will reduce unemployment in this state.

§5C-2-14. Requirements of loan.

1 (a) A loan may be made under the provisions of this
2 article when such loan is based upon the criteria set forth in
3 section sixteen of this article. In addition, the terms of any
4 such loan shall provide that the loan is made upon the
5 following findings of the board of investments:

6 (1) That the prospective earning power of the borrower,
7 together with ^{the} character and value of any security pledged,
8 furnish reasonable assurance of repayment of the loan in
9 accordance with its terms;

10 (2) That the loan will bear interest at a rate determined
11 by the board of investments to be reasonable, taking into
12 account the current average yield on outstanding
13 investments of the board of investments of the pension
14 funds in the consolidated pension fund established under
15 the provisions of section eight, article six, chapter twelve of
16 this code.

17 (3) That the corporation has agreed for as long as unpaid
18 balances of principal and interest are outstanding on a loan
19 issued under this article;

20 (A) To have prepared and submitted on or before the
21 thirtieth day preceding each fiscal year beginning after the
22 thirty-first day of December, one thousand nine hundred
23 eighty-six, a revised operating plan and financial plan

24 which cover the two-year period commencing with such
25 fiscal year and which show compliance with the
26 requirements of section sixteen of this article; *and*

27 (B) To prepare and deliver to the board of investments
28 within one hundred twenty days following the close of each
29 fiscal year, an analysis reconciling the borrower's actual
30 performance in generating employment in this state with
31 the projected employment for such year as set forth in the
32 operating plan and the financial plan in effect at the start of
33 such fiscal year;

34 (b) The borrower has agreed to pay such loan fees as
35 may be prescribed by the board of investments from time to
36 time. The board of investments shall prescribe and collect
37 no less frequently than annually a loan fee in connection
38 with each loan made under the provisions of this article.
39 Such fee shall be sufficient to compensate the board of
40 investments for all of the administrative expenses of the
41 board of investments related to the loan, but in no case shall
42 such fee be less than one-half of one percent per annum of
43 the outstanding principal amount of the loan computed
44 daily. All amounts collected by the board of investments
45 pursuant to this subsection (b) shall be deposited in the
46 state treasury as general revenue.

§5C-2-15. Limitations on loan authority.

1 (a) The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed fifty million dollars in the aggregate principal
4 amount outstanding.

§5C-2-16. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article shall
2 be payable in full not later than twenty years from the date
3 the loans is made.

4 (b) The board of investments shall require security for
5 the loans to be made under this article at the time the
6 commitment is made. Any commitment to make a loan
7 under the provisions of this article shall contain all of the
8 affirmative and negative covenants and other protective
9 provisions that the board of investments determines are
10 appropriate.

§5C-2-17. Enforcement of rights accruing to the state.

1 The board of investments shall take such action as may be
2 appropriate to enforce any right accruing to the state or any
3 officer or agency thereof as a result of the making of a loan
4 under the provisions of this article.

§5C-2-18. Tax credit for borrowers.

1 (a) There shall be allowed to every borrower under the
2 provisions of this article, as a credit against the business
3 and occupation tax imposed by article thirteen, chapter
4 eleven of this code, and as a credit against the corporation
5 net income tax imposed by article twenty-four of said
6 chapter eleven, the amount determined under subsection
7 (b) of this section. The liability of such borrower for
8 business and occupation tax and corporation net income
9 tax for the taxable year shall be the tax imposed by said
10 chapter eleven for such taxes, reduced by the sum of the
11 credit allowable under subsection (b) of this section.

12 (b) The amount of credit allowed by subsection (a) for
13 the taxable year shall be equal to the amount of principal
14 and interest paid by the borrower during the taxable year
15 on a loan made under this article, subject to the limitations
16 set forth in subsection (c) of this section.

17 (c) Notwithstanding subsection (b) of this section, the
18 amount of the credit allowed by this section shall not exceed
19 the liability of the borrower for business and occupation tax
20 and corporation net income tax for the taxable year. The tax
21 credit granted under the provisions of this section shall not
22 extend beyond a period of five taxable years. The tax credit
23 granted under the provisions of this section shall be in
24 addition to the credits provided for in articles thirteen-c,
25 thirteen-d and thirteen-e, chapter eleven of this code. There
26 shall be no carryback of unused tax credit to taxable years
27 preceding the tax year, nor shall there be a carryover to
28 taxable years following the tax year.

§5C-2-19. Reports to the Legislature.

1 The board of investments shall submit to the Legislature
2 annually a full report of its activities under this article
3 during fiscal years 1985-1986 and 1986-1987, and annually
4 thereafter so long as any loan guaranteed under this article

5 is outstanding. The report for 1987 shall include an
6 evaluation of the long-term employment implications of the
7 loan program created under the provisions of this article,
8 with findings, conclusions, and recommendations for
9 legislative and administrative actions considered
10 appropriate to future loans under this article or under
11 similar loan programs which might be foreseen.

§5C-2-20. Termination.

1 The authority of the board of investments to make loans
2 under this article shall expire in accordance with the
3 provisions of article ten, chapter four of this code.

§5C-2-21. Inspection, audit, and investigation.

1 (a) At any time a request for an application for a loan
2 under this article is pending or a loan under this article is
3 outstanding, the board of investments is authorized to
4 inspect and copy all accounts, books, records, memoranda,
5 correspondence, and other documents and transactions of
6 the borrower.

7 (b) The legislative auditor shall make such audits as
8 may be deemed appropriate by the President of the Senate
9 and the Speaker of the House of Delegates of all accounts,
10 books, records, memoranda, correspondence, and other
11 documents and transactions of the borrower. No loan may
12 be made under this article unless and until the borrower
13 agrees, in writing, to allow the legislative auditor to make
14 such audits. The legislative auditor shall report the results
15 of all such audits to the Legislature.

16 (c) The board of investments is empowered to
17 investigate and shall investigate all allegations of fraud,
18 dishonesty, incompetence, misconduct, or irregularity in
19 the management of the affairs of the borrower which are
20 material to the borrower's ability to repay a loan made
21 under the provisions of this article.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-1. Short title.

1 This chapter shall be known and cited as the "West
2 Virginia Public Energy Authority Act."

§5D-1-2. Purpose and intent.

1 The Legislature finds and declares:

2 (a) That the long-term health and economy of the
3 United States will depend upon the availability of reliable
4 sources of energy;

5 (b) That the state of West Virginia has abundant
6 reserves of coal, natural gas and other natural resources;

7 (c) That the economy of the state of West Virginia needs
8 a reliable and dependable market for the state's coal,
9 natural gas and other natural resources;

10 (d) That, with all due regard to the protection and
11 environment and husbandry of the natural resources of this
12 state, the health, happiness, safety, right of gainful
13 employment and general welfare of the citizens of this state
14 will be promoted by the establishment and operation of coal
15 fired electric generating plants and the establishment and
16 operation of natural gas transmission projects and or other
17 energy projects; and

18 (e) That the means and measures herein authorized for
19 the building and operation of the facilities described in
20 subsection (d) are, as a matter of public policy, for the
21 public purpose of the state.

22 Accordingly, the public energy authority created herein
23 shall be authorized to initiate such directions and take such
24 measures as may be necessary to effectuate the public
25 purpose of this chapter.

§5D-1-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia public energy
4 authority created in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.

7 (2) "Board" means the West Virginia public energy
8 authority board created in section four of this article, which
9 shall manage and control the West Virginia public energy
10 authority.

11 (3) "Bond" means a revenue bond or note issued by the
12 West Virginia economic development authority to effect the
13 intents and purposes of this article.

14 (4) "Construction" includes construction,

15 reconstruction, enlargement, improvement and providing
16 furnishings or equipment.

17 (5) "Cost" means, as applied to natural gas transmission
18 projects, electric power generating projects or other energy
19 projects authorized by the authority shall include but not be
20 limited to: the cost of their acquisition and construction,
21 including all costs pertaining to pipelines; the cost of
22 acquisition of all land, rights-of-way, property rights,
23 easements, franchise rights, contract rights, lease rights
24 and other rights or interests required by the authority for
25 such acquisition and construction; the cost of demolishing
26 or removing any pipeline, buildings or structures on land so
27 acquired, including the cost of acquiring any lands to which
28 such pipelines, buildings or structures may be moved; the
29 cost of acquiring or constructing and equipping a principal
30 office and suboffices of the authority; the cost of diverting
31 highways; interchange of highways and access roads to
32 private property, including the cost of land or easements
33 therefor; the cost of all machinery, furnishings, and
34 equipment; all financing charges, and interest prior to and
35 during construction and after completion of construction;
36 the cost of all engineering services and all expenses of
37 research and development with respect to natural gas
38 transmission projects, electric power generating projects,
39 and related facilities; the cost of all legal services and
40 expenses; cost of all plans, specifications, surveys and
41 estimates of cost and revenues; all working capital and
42 other expenses necessary or incident to determining the
43 feasibility or practicability of acquiring or constructing any
44 such projects; all administrative expenses and such other
45 expenses as may be necessary or incident to the acquisition
46 or construction of any such projects; the financing of such
47 acquisition or construction, and the cost of financing of the
48 placing of any such project in operation. Any obligation or
49 expenses incurred after the effective date of this article by
50 any governmental agency, with the approval of the
51 authority, for surveys, borings, preparation of plans and
52 specifications and other engineering services in connection
53 with the acquisition or construction of a project shall be
54 regarded as a part of the cost of such project and shall be
55 reimbursed out of the proceeds of loans or revenue bonds as
56 authorized by the provisions of this article.

57 (6) "End-user" means any person who consumes or uses
58 natural gas in connection with any industrial, commercial,
59 residential or other use, except that such term shall not
60 include any person purchasing such natural gas for resale to
61 another person. For purposes of this article, the term end-
62 user shall include local distribution companies and
63 intrastate pipelines as defined in article three, chapter
64 twenty-four of this code.

65 (7) "Governmental agency" means the state
66 government or any agency, department, division or unit
67 thereof; counties; municipalities; public service districts;
68 regional governmental authorities and any other
69 governmental agency, entity, political subdivision, public
70 corporation or agency; the United States government or any
71 agency, department, division or unit thereof; and any
72 agency, commission or authority established pursuant to an
73 interstate compact or agreement.

74 (8) "Local distribution company" means any person,
75 other than any interstate pipeline or any intrastate pipeline,
76 engaged in transportation or local distribution of natural
77 gas and the sale of natural gas for ultimate consumption.

78 (9) "Owner" includes all persons having any title or
79 interest in any property rights, easements and interests
80 authorized to be acquired by this article.

81 (10) "Person" means any public or private corporation,
82 institution, association, firm or company organized or
83 existing under the laws of this or any other state or country;
84 the United States or the state of West Virginia; any federal
85 or state governmental agency; political subdivision; county
86 commission; municipality; industry; public service district;
87 partnership; trust; estate; person or individual; and group
88 of persons or individuals acting individually or as a group
89 or any other legal entity whatever.

90 (11) "Pipeline" or "pipelines" means any actual lines of
91 pipe for the transmission and distribution of natural gas
92 together with all appurtenances, facilities, structures,
93 equipment, machinery and other items related to the
94 transmission and distribution of gas through lines of pipe.

95 (12) "Natural gas transmission project" means any
96 natural gas pipeline and all facilities necessary or incident
97 to the transportation of natural gas to or for the benefit of
98 industrial or other end-users in West Virginia, the

99 acquisition or construction of which is financed in whole or
 100 in part by the West Virginia public energy authority or the
 101 acquisition or construction of which is financed in whole or
 102 in part from funds made available by grant, loan or any
 103 other source by, or through, the authority as provided in
 104 this article, including facilities, the acquisition or
 105 construction of which is authorized in whole or in part by
 106 the West Virginia public energy authority or the acquisition
 107 or construction of which is financed in whole or in part from
 108 funds made available by grant, loan or any other source by,
 109 or through, the authority as provided in this article,
 110 including all pipelines, buildings and facilities which the
 111 authority deems necessary for the operation of the project,
 112 together with all property, rights, easements and interests
 113 which may be required for the operation of the project.

114 (13) "Electric power generating project" means the
 115 complex of structures, machinery and associated
 116 equipment for the generation and transmission of
 117 electricity produced from coal, and all facilities related or
 118 incidental thereto.

119 (14) "Revenue" means any money or thing of value
 120 collected by, or paid to, the West Virginia public energy
 121 authority as rates, user fees, services charges or other
 122 charge for the electric power produced by, or for the use of,
 123 or in connection with, any electric power generating
 124 project; or as rent, use, transportation or service fee or
 125 charge for use of, or in connection with, any natural gas
 126 transmission project; or other money or property from any
 127 source which is received and may be expended for or
 128 pledged as revenues pursuant to this article.

**§5D-1-4. West Virginia public energy authority created; West
 Virginia public energy board created;
 organization of authority and board; appointment
 of board members; term, compensation and
 expenses; director authority.**

1 There is hereby created the West Virginia public energy
 2 authority. The authority is a governmental instrumentality
 3 of the state and a body corporate. The exercise by the
 4 authority of the powers conferred by this article and the
 5 carrying out of its purposes and duties shall be deemed and

6 held to be, and are hereby determined to be essential
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and operated
9 by a nine member board known as the West Virginia public
10 energy authority board which is hereby created. The nine
11 members of the board shall be appointed by the governor,
12 by and with the advice and consent of the Senate. Two
13 members shall be appointed to serve a term of two years;
14 two members shall be appointed to serve a term of three
15 years; two members shall be appointed to serve a term of
16 four years; two members shall be appointed to serve a term
17 of five years; and one member shall be appointed to serve a
18 term of six years. The successor of each such appointed
19 member shall be appointed for a term of five years, except
20 that any person appointed to fill a vacancy occurring prior to
21 the expiration of the term for which ^{he} the predecessor was
22 appointed shall be appointed only the remainder of such
23 term. Each board member shall serve until the appointment
24 of his successor. No more than five of the board members
25 shall at any one time belong to the same political party. No
26 more than four members of the board shall be employed by
27 or associated with any industry this authority is empowered
28 to effect. Board members may be reappointed to serve
29 additional terms.

30 All members of the board shall be citizens of the state.
31 Before entering upon his duties, each member of the board
32 shall comply with the requirements of article one, chapter
33 six of this code and give bond in the sum of twenty-five
34 thousand dollars in the manner provided in article two,
35 chapter six of this code. The governor may remove any
36 board member for cause as provided in article six, chapter
37 six of this code.

38 Annually the board shall elect one of its members as
39 chairman and another as vice chairman, and shall appoint a
40 secretary-treasurer, who need not be a member of the
41 board. Five members of the board shall constitute a quorum
42 and the affirmative vote of the majority of members present
43 at any meeting shall be necessary for any action taken by
44 vote of the board. No vacancy in the membership of the
45 board shall impair the rights of a quorum by such vote to
46 exercise all the rights and perform all the duties of the
47 board and the authority. The person appointed as
48 secretary-treasurer, including a board member if he is so

49 appointed, shall give bond in the sum of fifty thousand
50 dollars in the manner provided in article two, chapter six of
51 this code.

52 Each member of the board shall receive an annual salary
53 of six thousand dollars, payable in monthly installments.
54 Each member of the board shall be reimbursed for all
55 reasonable and necessary expenses actually incurred in the
56 performance of his duty as a member of such board. All such
57 expenses incurred by the board shall be payable solely from
58 funds of the authority or from funds appropriated for such
59 purpose by the legislature and no liability or obligation
60 shall be incurred by the authority beyond the extent to
61 which moneys are available from funds of the authority or
62 from such appropriations.

63 There shall also be a director of the authority appointed
64 by the board, who shall be responsible for managing and
65 administering the daily functions of the authority and for
66 performing any and all other functions necessary or helpful
67 to the effective functioning of the authority, together with
68 all other functions and powers as may be delegated to him
69 by the board.

§5D-1-5. Powers, duties and responsibilities of authority generally.

1 The West Virginia public energy authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and capacity
5 to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its affairs
8 and the conduct of its business and rules and regulations to
9 implement and make effective its powers and duties, such
10 rules and regulations to be promulgated in accordance with
11 the provisions of chapter twenty-nine-a of this code.

12 (2) Adopt and use an official seal and alter the same at
13 pleasure.

14 (3) Maintain a principal office and, if necessary,
15 regional suboffices at locations properly designated or
16 provided.

17 (4) Sue and be sued in its own name and plead and be
18 impleaded in its own name, and particularly to enforce the

19 obligations and covenants made under this article. Any
20 actions against the authority shall be brought in the circuit
21 court of Kanawha County.

22 (5) Apply to the economic development authority for the
23 issuance of bonds payable solely from revenues as provided
24 in article fifteen, chapter twenty-one of this code: *Provided*,
25 That the economic development authority shall not issue
26 any such bonds except by an act of general law: *Provided*
however → 27 ~~further~~, That the powers of eminent domain or
28 condemnation provided for in this section shall not be
29 exercised until such time as the bonds provided for in this
30 paragraph have been approved by an act of general law and
31 issued by the economic development authority.

32 (6) Acquire by gift or purchase, hold and dispose of real
33 and personal property in the exercise of its powers and the
34 performance of its duties as set forth in this article.

35 (7) Acquire in the name of the state, by purchase or
36 otherwise, on such terms and in such manner as it deems
37 proper, or by the exercise of the right of eminent domain in
38 the manner provided in chapter fifty-four of this code, such
39 real property or parts thereof or rights therein, rights-of-
40 way, property, rights, easements and interests it deems
41 necessary for carrying out the provisions of this article, and
42 compensation shall be paid for public or private lands so
43 taken.

44 The term "real property" as used in this article is defined
45 to include lands, structures, franchises and interests in
46 land, including lands under water and riparian rights, and
47 any and all other things and rights usually included within
48 the said term, and includes also any and all interests in such
49 property less than full title, such as easements, rights-of-
50 way, uses, leases, licenses and all other incorporeal
51 hereditaments and every estate, interest or right, legal or
52 equitable, including terms for years and liens thereon by
53 way of judgments, mortgages or otherwise, and also all
54 claims for damages for such real estate.

55 (8) Make and enter into all contracts and agreements
56 and execute all instruments necessary or incidental to the
57 performance of its duties and the execution of its powers.

58 (9) Employ managers, superintendents and other
59 employees, and retain or contract with consulting
60 engineers, financial consultants, accounting experts,

61 architects, attorneys, and such other consultants and
62 independent contractors as are necessary in its judgment to
63 carry out the provisions of this article, and fix the
64 compensation or fees thereof. All expenses thereof shall be
65 payable solely from the proceeds of revenue bonds or notes
66 issued by the economic development authority, from
67 revenues and from funds appropriated for such purpose by
68 the Legislature.

69 (10) Receive and accept from any federal agency, or any
70 other source, grants for or in aid of the construction of any
71 project or for research and development with respect to
72 electric power generating projects, natural gas
73 transmission projects or other energy projects, and receive
74 and accept aid or contribution from any source of money,
75 property, labor or other things of value to be held, used and
76 applied only for the purpose for which such grants and
77 contributions are made.

78 (11) Purchase property coverage and liability insurance
79 for any electric power generating project or natural gas
80 transmission project or other energy project and for the
81 principal office and suboffices of the authority, insurance
82 protecting the authority and its officers and employees
83 against liability, if any, for damage to property or injury to
84 or death of persons arising from its operations and any
85 other insurance which may be provided for under a
86 resolution authorizing the issuance of bonds or in any trust
87 agreement securing the same.

88 (12) Charge, alter and collect transportation fees and
89 other charges for the use or services of any natural gas
90 transmission project as provided in this article.

91 (13) Charge and collect fees or other charges from any
92 energy project undertaken as a result of this article.

93 (14) Charge reasonable fees in connection with the
94 making and providing of electric power and the sale thereof
95 to corporations, states, municipalities or other entities in
96 the furtherance of the purposes of this article.

97 (15) Purchase and sell electricity in and out of the state
98 of West Virginia.

99 (16) Enter into wheeling contracts for the transmission
100 of electric power over another party's lines.

101 (17) Make and enter into the construction of a facility and
102 joint ownership with another utility, and the provisions of

103 this article shall not constrain the authority from
104 participating as a joint partner therein.

105 (18) Make and enter into joint ownership agreements.

106 (19) Establish or increase reserves from moneys
107 received or to be received by the authority to secure or to
108 pay the principal of and interest on the bonds and notes
109 issued by the economic development authority pursuant to
110 the provisions of article fifteen, chapter thirty-one of this
111 code.

112 (20) Broker the purchase of natural gas for resale to
113 end-users: *Provided*, That whenever there are local
114 distribution company pipelines already in place the
115 authority shall arrange to transport the gas through such
116 pipelines at the rates approved by the public service
117 commission of West Virginia.

118 (21) Engage in market research, feasibility studies,
119 commercial research, and other studies and research
120 pertaining to electric power generating projects and
121 natural gas transmission projects or any other functions of
122 the authority pursuant to this article.

123 (22) Enter upon any lands, waters and premises in the
124 state for the purpose of making surveys and examinations
125 as it may deem necessary or convenient for the purpose of
126 this article, and such entry shall not be deemed a trespass,
127 nor shall an entry for such purposes be deemed an entry
128 under any condemnation proceedings which may be then
129 pending, and the authority shall make reimbursement for
130 any actual damages resulting to such lands, waters and
131 premises as a result of such activities.

132 (23) Participate in any reorganization proceeding
133 pending pursuant to the United States Code (being the act
134 of Congress establishing a uniform system of bankruptcy
135 throughout the United States, as amended) or any
136 receivership proceeding in a state or federal court for the
137 reorganization or liquidation of a responsible buyer or
138 responsible tenant. The authority may file its claim against
139 any such responsible buyer or responsible tenant in any of
140 the foregoing proceedings, vote upon any question pending
141 therein, which requires the approval of the creditors
142 participating in any reorganization proceeding or
143 receivership, exchange any evidence of such indebtedness
144 for any property, security or evidence of indebtedness

145 offered as a part of the reorganization of such responsible
146 buyer or responsible tenant or of any entity formed to
147 acquire the assets thereof and may compromise or reduce
148 the amount of any indebtedness owing to it as a part of any
149 such reorganization.

150 (24) Make or enter into management contracts with a
151 second party or parties to operate any electric power
152 generating project or any gas transmission project and
153 associated facilities, or other related energy project, either
154 during construction or permanent operation.

155 (25) Do all acts necessary and proper to carry out the
156 powers expressly granted to the authority in this article.

157 (26) Nothing herein shall be construed to permit the
158 transportation of gas produced outside of this state through
159 a natural gas transmission project.

**§5D-1-6. Authority may construct, finance, maintain, etc.,
electric power generating projects and
transmission facilities.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia public energy authority may
4 initiate, acquire, construct, maintain, repair and operate
5 electric power generating projects and transmission
6 facilities, and may request the issuance of revenue bonds by
7 the economic development authority, payable solely from
8 revenues, to pay the cost or finance in whole or in part such
9 projects: *Provided*, That the economic development
10 authority shall not be authorized to issue any such bonds
11 except by an act of general law, as provided in article
12 fifteen, chapter thirty-one of this code. An electric power
13 generating project shall not be undertaken unless it has
14 been determined by the authority that the project will be
15 consistent with the purposes set out in this article. Any
16 resolution providing for acquiring or constructing such
17 projects shall include a finding by the authority that such
18 determinations have been made.

19 The authority is authorized and directed:

20 (1) To cooperate with the appropriate agencies and
21 officials of the United States government to the end that
22 any electric power generating project shall be so planned

23 and constructed as to be adaptable to the plans of the
24 United States.

25 (2) To apply to the appropriate agencies and officials of
26 the United States government including the federal power
27 commission for such licenses, permits or approval of its
28 plans or projects as it may deem necessary or advisable, and
29 in its discretion and upon such terms and conditions as it
30 may deem appropriate, to accept such licenses, permits or
31 approvals as may be tendered to it by such agencies or
32 officials and such federal or other public or governmental
33 assistance as is now or may hereafter become available to it;
34 and to enter into contracts with such agencies or officials
35 relating to the construction or operation of any project
36 authorized by this article.

37 (3) To proceed with the physical construction or
38 completion of any project authorized by this article,
39 including the erection of the necessary power houses and
40 other facilities, instrumentalities and things necessary or
41 convenient to that end, and including also the erection of
42 such transmission lines as may be necessary to conduct the
43 electricity; and including also the acquisition or
44 construction of transmission lines or the use of such
45 transmission lines, available or which may be made
46 available, to conduct electricity to such point or points at
47 which the electricity is sold by the authority to any person,
48 corporation or association, public or private.

49 (4) To cooperate with and, when the board deems it
50 feasible and advisable, to enter into contractual
51 arrangements with utility companies.

52 (5) To purchase, when available, coal produced in this
53 state as the fuel source for all electric power generating
54 projects.

**§5D-1-7. Authority may construct, finance, maintain, etc.,
natural gas transmission projects and facilities.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the State as set forth in this
3 article, the West Virginia public energy authority may
4 initiate, acquire, construct, reconstruct, enlarge, maintain,
5 repair, improve, furnish, equip, lease or rent, and operate
6 natural gas transmission projects at such locations or areas
7 within the state as may be determined by the authority:

8 *Provided*, That at least thirty days prior to exercising any
9 such power, the authority shall provide written notice to
10 any local natural gas distribution company or to any
11 company that transports natural gas in intrastate or
12 interstate commerce, which would experience a direct loss
13 of sales to an end-user presently served by such company as
14 a result of such natural gas transmission project. For
15 purposes of this article, notice shall be given either by
16 personal delivery thereof to the affected company to be so
17 notified, or by depositing such notice in the United States
18 mail, postage prepaid, in an envelope addressed to such
19 affected company.

§5D-1-8. Annual report to governor and Legislature; audit.

1 The authority shall make an annual report, as soon as
2 possible after the close of each fiscal year, of its activities
3 for the preceding fiscal year to the governor and the
4 Legislature. Each such report shall set forth a complete
5 operating and financial statement covering the authority's
6 operations during the preceding fiscal year. The authority
7 shall cause an audit of its books and accounts to be made at
8 least once each fiscal year by certified public accountants
9 and the cost thereof may be treated as a part of the cost of
10 construction or of operations of its projects.

§5D-1-9. Expenses of authority.

1 All expenses incurred in carrying out the provisions of
2 this article shall be payable solely from funds provided
3 under authority of this article. Such article does not
4 authorize the authority to incur indebtedness or liability on
5 behalf of or payable by the state.

§5D-1-10. Use of funds by authority; restrictions.

1 All moneys, properties and assets acquired by the
2 authority, bonds or as revenues or otherwise, shall be held
3 by it in trust for the purposes of carrying out its powers and
4 duties, and shall be used and reused in accordance with the
5 purposes and provisions of this article. Such moneys shall
6 at no time be commingled with other public funds.

§5D-1-11. Investment of funds by authority.

1 The authority is hereby authorized and empowered to

2 invest any funds not needed for immediate disbursement in
3 any of the following securities;

4 (1) (i) Direct obligations of or obligations guaranteed by
5 the United States of America; (ii) evidences of ownership of
6 a proportionate interest in specified direct obligations of, or
7 specific obligations the timely payment of the principal of
8 and the interest on which are unconditionally and fully
9 guaranteed by, the United States of America, which
10 obligations are held by a bank or trust company organized
11 and existing under the law of the United States of America
12 or any state thereof in the capacity of custodian and (iii)
13 obligations, the sole source of the payment of the principal
14 of and interest on which are obligations of the nature of
15 those described in clause (i), which are irrevocably pledged
16 for such purpose.

17 (2) Bonds, debentures, notes or other evidences of
18 indebtedness issued by any of the following agencies: Banks
19 for cooperatives; federal intermediate credit banks; federal
20 home loan bank system; Export-Import Bank of the United
21 States; federal land banks; the Federal National Mortgage
22 Association or the Government National Mortgage
23 Association;

24 (3) Public housing bonds issued by public agencies or
25 municipalities and fully secured as to the payment of both
26 principal and interest by a pledge of annual contributions
27 under an annual contributions contract or contracts with
28 the United States of America; or temporary notes issued by
29 public agencies or municipalities or preliminary loan notes
30 issued by public agencies or municipalities, in each case,
31 fully secured as to the payment of both principal and
32 interest by a requisition or payment agreement with the
33 United States of America;

34 (4) Certificates of deposit secure by obligations of the
35 United States of America;

36 (5) Direct obligations of or obligations guaranteed by
37 the state of West Virginia;

38 (6) Direct and general obligations of any other state
39 within the territorial United States, to the payment of the
40 principal of and interest on which the full faith and credit of
41 such state is pledged: *Provided*, That at the time of their
42 purchase, such obligations are rated in either of the two

43 highest rating categories by a nationally recognized bond-
44 rating agency;

45 (7) Any fixed interest bond, note or debenture of any
46 corporations organized and operating within the United
47 States: *Provided*, That such corporation shall have a
48 minimum net worth of fifteen million dollars and its
49 securities or its parent corporation's securities are listed on
50 one or more of the national stock exchanges: *Provided*,
51 *however*, That (i) such corporation has earned a profit in
52 eight of the preceding ten fiscal years as reflected in its
53 statements, and (ii) such corporation has not defaulted in
54 the payment of principal or interest on any of its
55 outstanding funded indebtedness during its preceding ten
56 fiscal years, and (iii) the bonds, notes or debentures of such
57 corporation to be purchases are rated "AA" or the
58 equivalent thereof or better than "AA" or the equivalent
59 thereof by at least two or more nationally recognized rating
60 services such as Standard and Poor's, Dun & Bradstreet or
61 Moody's; and

62 (8) Such other investments which at the time of the
63 acquisition thereof shall be listed as permissible
64 investments of trusted funds in an official statement,
65 offering circular or prospectus with respect to indebtedness
66 which is rated by Moody's or Standards & Poor not less than
67 the highest rating assigned by such agencies to any series of
68 bonds.

§5D-1-12. Maintenance, operation and repair of projects.

1 Each electric power generating project, each natural gas
2 transmission project, or other energy project, when
3 constructed and placed in operation, shall be maintained
4 and kept in good condition and repair by the authority.
5 Each such project owned by the authority shall be operated
6 by such operating employees as the authority employs or
7 pursuant to a contract or lease with a governmental agency
8 or person. All public or private property damaged or
9 destroyed in carrying out the provisions of this article and
10 in the exercise of the powers granted hereunder with regard
11 to any project shall be restored or repaired and placed in its
12 original condition, as nearly as practicable, or adequate
13 compensation made therefor out of funds provided in
14 accordance with the provisions of this article.

§5D-1-13. Bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 all revenue bonds issued for the purposes of this article shall
4 be lawful investments for the West Virginia state board of
5 investments and shall also be lawful investments for
6 banking institutions, societies for savings, building and
7 loan associations, savings and loan associations, deposit
8 guarantee associations, trust companies, insurance
9 companies, including domestic for life and domestic not for
10 life insurance companies.

§5D-1-14. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public
7 purpose. As the operation and maintenance of natural gas
8 transmission projects and electric power generating
9 projects, and other energy projects will constitute the
10 performance of essential governmental functions, the
11 authority shall not be required to pay any taxes or
12 assessments upon any such project or upon any property
13 acquired or used by the authority or upon the property
14 acquired or used by the authority or upon the income
15 therefrom. Such bonds and notes and all interest and
16 income thereon shall be exempt from all taxation by this
17 state, or any county, municipality, political subdivision or
18 agency thereof, except inheritance taxes.

**§5D-1-15. Acquisition of property by authority — acquisition
by purchase; governmental agencies authorized
to convey, etc., property.**

1 The authority may acquire by purchase, whenever it
2 deems such purchase expedient, any land, property, rights,
3 rights-of-way, franchises, easements, leases and other
4 interests in lands it deems necessary or convenient for the
5 construction and operation of any natural gas transmission

6 project, any electric power generating project, or other
7 energy project, upon such terms and at such prices it
8 considers reasonable and can be agreed upon between the
9 authority and the owner thereof, and take title thereto in
10 the name of the state.

11 All governmental agencies, notwithstanding any
12 contrary provision of law, may lease, lend, grant or convey
13 to the authority, at its request, upon such terms as the
14 proper authorities of such governmental agencies deem
15 reasonable and fair and without the necessity for an
16 advertisement, auction, order of court or other action or
17 formality, other than the regular and formal action of the
18 governmental agency concerned, any real property or
19 interest therein, including improvements thereto or
20 personal property which is necessary or convenient to the
21 effectuation of the authorized purposes of the authority,
22 including public roads and other real property or interests
23 therein, including improvements thereto or personal
24 property already devoted to public use.

**§5D-1-16. Authority not public utility and not subject to full
jurisdiction of public service commission;
authority subject to provisions concerning gas
pipeline safety.**

1 Notwithstanding anything contained in this article to the
2 contrary, and specifically notwithstanding any activities of
3 the authority which shall constitute a public service, the
4 authority shall not be considered or deemed a public utility
5 in any respect for purposes of chapter twenty-four of this
6 code, and neither the authority, nor any of its activities or
7 the activities of its agents or employees, nor any project
8 constructed, maintained or operated by the authority, nor
9 any other matters pertaining to the authority, shall be
10 subject to the jurisdiction of the public service commission
11 of West Virginia, either with respect to the powers of said
12 public service commission generally, or with respect to its
13 power over rates, or otherwise: *Provided*, That the
14 authority and all natural gas transmission projects which it
15 constructs, maintains or operates shall nevertheless be
16 subject to the provisions of chapter twenty-four-b of this
17 code concerning gas pipeline safety.

§5D-1-17. Transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers.

1 In conjunction with any natural gas transportation
2 project, and for any other purpose in order to effectuate the
3 policies and intent of this article, the authority may petition
4 the public service commission, pursuant to section three-a,
5 article three, chapter twenty-four of this code, to authorize
6 and require the transportation of natural gas for the
7 authority or for any end-user or other person doing business
8 with the authority, by intrastate pipelines with unused or
9 excess capacity not needed to meet its contractual
10 obligations, by interstate pipelines with unused or excess
11 capacity not needed to meet interstate commerce demands,
12 or by local distribution companies.

§5D-1-18. Transportation fees and other revenues from national gas transmission projects owned by the authority.

1 This section shall apply to any natural gas transmission
2 project or projects which are owned by the authority. The
3 authority may charge, alter and collect transportation fees
4 or other charges for the use or services of any natural gas
5 transmission project, and fix the terms, conditions,
6 transportation fees or other charges for such use or services.
7 Such transportation fees or other charges shall not be
8 subject to supervision or regulation by any other authority,
9 department, commission, board, bureau or agency of the
10 state, including specifically the public service commission.

§5D-1-19. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be
2 financially interested, directly or indirectly, in any contract
3 of any person with the authority, or in the sale of any
4 property, real or personal, to or from the authority. This
5 section does not apply to contracts or purchases of property,
6 real or personal, between the authority and any
7 governmental agency. If any officer, member or employee of
8 the authority has such financial interest in a contract or sale
9 of property prohibited hereby, he shall be guilty of a
10 misdemeanor, and, upon conviction thereof, shall be fined
11 not more than one thousand dollars, or imprisoned in the

12 county jail not more than one year, or both fined and
13 imprisoned.

§5D-1-20. Personal liability of members or persons acting on behalf of the authority.

1 (a) No director or any person acting on behalf of the
2 authority executing any contracts, comments or
3 agreements issued pursuant to this article shall be liable
4 personally upon such contracts, comments or agreements or
5 be subject to any personal liability or accountability by
6 reason thereof; and

7 (b) No director or any person acting on behalf of the
8 authority shall be personally liable for damage or injury
9 resulting from the performance of his duties hereunder.

§5D-1-21. Meetings and records of authority to be kept public.

1 All meetings of the authority shall be open to the public
2 and the records of the authority shall be open to public
3 inspection at all reasonable times, except as otherwise
4 provided in this section. All final actions of the authority
5 shall be journalized and such journal shall also be open to
6 the inspection of the public at all reasonable times. Any
7 records or information relating to secret processes or secret
8 methods of manufacture or production which may be
9 obtained by the authority or other persons acting under
10 authority of this article are confidential and shall not be
11 disclosed.

§5D-1-22. Liberal construction of article.

1 The provisions of this article are hereby declared to be
2 remedial and shall be liberally construed to effectuate its
3 purposes and intents.

§5D-1-23. Severability.

1 If any section, part, provision, subsection, subpart,
2 subdivision, paragraph or subparagraph of this article or
3 the application thereof to any person or circumstance is
4 held unconstitutional or invalid, such unconstitutionality
5 or invalidity shall not affect any other section, part
6 provision, subsection, subpart, subdivision, paragraph or
7 subparagraph of this article or its application or validity,

8 and to this end the provisions of this article are declared to
9 be severable.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

1 (a) "Eligible small business" means any business which
2 employs two hundred or less employees or has gross annual
3 receipts of four million dollars or less.

4 (b) "Eligible lending institution" means a financial
5 institution that is eligible to make commercial loans, is a
6 public depository of state funds and agrees to participate in
7 the linked deposit program.

8 (c) "Linked deposit" means a certificate of deposit
9 placed by the state treasurer with an eligible lending
10 institution at up to three percent below current market
11 rates, as determined and calculated by the state treasurer,
12 provided the institution agrees to lend the value of such
13 deposit, according to the deposit agreement provided for by
14 this article, to eligible small businesses at three percent
15 below the present borrowing rate applicable to each
16 specific business at the time of the deposit of state funds in
17 the institution.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagnation
3 or decline, that high interest rates have caused small
4 businesses in this state to suffer disproportionately in
5 profitability and competition and that such high interest
6 rates have fostered a serious increase in unemployment. The
7 linked deposit program provided for by this article is
8 intended to provide a statewide availability of lower cost
9 funds for lending purposes that will materially contribute
10 to the economic revitalization of this state. Accordingly, it
11 is declared to be the public policy of the state through the
12 linked deposit program to create an availability of lower-
13 cost funds to inject needed capital into the business
14 community, sustain or improve business profitability and
15 protect the jobs of citizens of this state.

§12-1A-3. Limitations on investment in linked deposits.

1 The state treasurer may invest in linked deposits,
2 provided that at the time of placement of the linked deposit
3 not more than ten percent of the state's total investment
4 portfolio is so invested. The total amount so deposited at
5 any one time shall not exceed, in the aggregate, one hundred
6 million dollars.

§12-1A-4. Applications for loan priority; loan package.

1 (a) An eligible lending institution that desires to receive
2 a linked deposit shall accept and review applications for
3 loans from eligible small businesses. The lending institution
4 shall apply all usual lending standards to determine the
5 creditworthiness of each eligible small business.

6 (b) An eligible small business shall certify on its loan
7 application that the reduced rate loan will be used
8 exclusively to create new jobs or preserve existing jobs and
9 employment opportunities. Whoever knowingly makes a
10 false statement concerning such application shall be
11 prohibited from entering into the linked deposit loan
12 program.

13 (c) In considering which eligible small businesses
14 should receive reduced rate loans, the eligible lending
15 institution shall give priority to the economic needs of the
16 area in which the business is located and the number of jobs
17 to be created or preserved by the receipt of such loan.

18 (d) The eligible financial institution shall forward to the
19 state treasurer a linked deposit loan package, in the form
20 and manner as prescribed by the state treasurer. The
21 package shall include such information as required by the
22 state treasurer, including the amount of the loan requested
23 and the number of jobs to be created or sustained by each
24 eligible small business. The institution shall certify that
25 each applicant is an eligible small business, and shall, for
26 each business, certify the present borrowing rate applicable
27 to each specific eligible business.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The state treasurer may accept or reject a linked
2 deposit loan package or any portion thereof, based on the

3 ratio of state funds to be deposited to jobs sustained or
4 created.

5 (b) Upon acceptance of the linked deposit loan package
6 or any portion thereof, the state treasurer may place
7 certificates of deposit with the eligible lending institution
8 at three percent below current market rates, as determined
9 and calculated by the state treasurer. When necessary, the
10 treasurer may place certificates of deposit prior to
11 acceptance of a linked deposit loan package.

12 (c) The eligible lending institution shall enter into a
13 deposit agreement with the state treasurer, which shall
14 include requirements necessary to carry out the purposes of
15 this article. Such requirements shall reflect the market
16 conditions prevailing in the eligible lending institution's
17 lending area. The agreement may include a specification of
18 the period of time in which the lending institution is to lend
19 funds upon the placement of a linked deposit and shall
20 include provisions for the certificates of deposit to be
21 placed for up to two-year maturities that may be renewed
22 for up to an additional two years. Interest shall be paid at
23 the times determined by the state treasurer.

**§12-1A-6. Rate of loan; certification and monitoring of
compliance; reports.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, such institution is required to
3 lend such funds to each approved eligible small business
4 listed in the linked deposit loan package required in
5 subsection (d), section four of this article, and in accordance
6 with the deposit agreement required by subsection (c),
7 section five of this article. The loan shall be at three percent
8 below the present borrowing rate applicable to each
9 business. A certification of compliance with this section in
10 the form and manner as prescribed by the state treasurer
11 shall be required of the eligible lending institution.

12 (b) The state treasurer shall take any and all steps
13 necessary to implement the linked deposit program and
14 monitor compliance of eligible lending institutions and
15 eligible small businesses. The state treasurer and the
16 industrial development authority shall notify each other at
17 least quarterly of the names of the businesses receiving
18 financial assistance from their respective programs.

19 By the first day of January, April, July and October of
20 each year, the treasurer shall report on the linked deposit
21 program for the preceding calendar quarter to the governor
22 and to the joint committee on government and finance. The
23 reports shall set forth the linked deposits made by the state
24 treasurer under the program during the quarter and shall
25 include information regarding the nature, terms and
26 amounts of the loans upon which the linked deposits were
27 based and the eligible small business to which the loans
28 were made.

§12-1A-7. Liability of state and treasurer.

1 The state and the state treasurer are not liable to any
2 eligible lending institution in any manner for payment of
3 the principal or interest on the loan to an eligible small
4 business. Any delay in payment or default on the part of an
5 eligible small business does not in any manner affect the
6 deposit agreement between the eligible lending institution
7 and the state treasurer.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-1. Legislative findings.

1 The Legislature finds that West Virginia has extensive
2 forest resources and their continued development and
3 expansion is vital to the economic well-being of the state
4 and its people.

5 The Legislature also finds that the production potential
6 of the state's forest resources remains far greater than the
7 present demand.

8 The Legislature further finds that the promotion of
9 existing forest products industries and the promotion of
10 new forest products industries would benefit the state in
11 terms of employment and additional revenue to the state.

12 The Legislature further finds and declares that, to
13 increase employment and boost the state's economy, the
14 limits to the development of the potential of West Virginia
15 forest resources must be reduced through an intensive
16 campaign aimed at making new contacts, developing new
17 and existing markets and increasing public awareness of
18 the advantages of the forest resources in West Virginia.

19 The Legislature further finds that the state forests are an
20 important resource for silvicultural and scientific research;
21 developed and undeveloped outdoor recreation;
22 propagation of forest trees, fish and wildlife; wildlife and
23 fisheries management; aesthetic preservation; hunting and
24 fishing; timber production; and demonstration of state-of-
25 the-art forestry management and therefor should be
26 managed on a multiple-use basis.

§19-1A-2. Legislative purposes.

1 The purposes of this article are to provide for promoting
2 West Virginia products; promoting new forest products
3 industries; developing existing forest product industries;
4 promoting coordination of all state forests resources;
5 advising the governor and Legislature on all aspects of
6 forestry, the management of state forests for conservation
7 and preservation of wildlife, fish, forest species, natural
8 areas, aesthetic and scenic values and to provide developed
9 and undeveloped outdoor recreational opportunities, and
10 hunting and fishing for the citizens of this state and its
11 visitors.

**§19-1A-3. Division of forestry; division director; duties,
powers, lands, records, equipment,
appropriations and personnel transferred;
creation of a special revenue account.**

1 The division of forestry which existed within the
2 department of natural resources pursuant to article three,
3 chapter twenty of this code is hereby abolished. And, except
4 as otherwise provided in this article, all powers and duties
5 previously exercised by the director of natural resources
6 under subsection thirteen, section seven, article one and
7 article three, chapter twenty of this code, except those
8 powers and duties relating solely to wildlife areas as
9 described in section three, article three, chapter twenty of
10 this code are hereby transferred to the division of forestry
11 herein created in the department of agriculture. All books,
12 papers, maps, charts, plans, literature and other records,
13 equipment, personnel, buildings, structures, other tangible
14 properties and assets and appropriations used by or
15 assigned to the division shall be transferred with the
16 program. However, nothing in this article shall be

17 construed as to transfer the legal title to any real property
18 possessed by the department of natural resources prior to
19 the thirtieth day of June, one thousand nine hundred
20 eighty-five. The division of forestry of the department of
21 agriculture shall have within its jurisdiction and
22 supervision the state forests, other forests and woodland
23 areas, the protection of forest areas from injury and damage
24 by fire, disease, insects and other pestilences and forces the
25 management of forest areas for natural resources,
26 conservation and undeveloped recreational activities,
27 administration of the southeastern interstate forest fire
28 protection compact and other compacts and agreements
29 relating to forest management and husbandry, and the
30 administration and enforcement of laws relating to the
31 conservation, development, protection, use and enjoyment
32 of all forest land areas of the state consistent with the
33 provisions of this chapter. All moneys collected from the
34 sale of timber realized through management of the state-
35 owned forests and the sale of seedlings from the tree
36 nurseries shall be paid into the state treasury and into a
37 special account therein to be subsequently appropriated to
38 the department of agriculture for the administration of this
39 article.

40 The chief of the division shall be designated state forester
41 and shall be responsible for the execution and
42 administration of the provisions of this article as an integral
43 part of the natural resources program of the state. In
44 addition to meeting merit system or civil service
45 qualifications and requirements, the state forester shall be
46 a graduate of an accredited school of forestry with practical
47 experience and training in forestry field organization and
48 programs. All other personnel shall be transferred with the
49 current merit or civil service ratings they now hold under
50 the civil service system.

51 The state forester shall study means and methods of
52 implementing the provisions of section fifty-three, article
53 six of the Constitution of West Virginia, relating to forest
54 lands, and shall prepare and recommend to the
55 commissioner legislation thereon.

56 The commissioner of the department of agriculture shall
57 meet with the state forester and the director of the
58 department of natural resources prior to the first day of

59 June, one thousand nine hundred eighty-five, to facilitate
60 the orderly transfer of the forestry division, books, papers,
61 maps, charts, plans, literature, records, equipment,
62 buildings, structures and other tangible properties and
63 assets. The director of the department of natural resources
64 shall cooperate fully to ensure that present forestry
65 operations and programs are not discontinued prior to the
66 transfer which shall be the first day of July, one thousand
67 nine hundred eighty-five. The director of the department of
68 natural resources and the commissioner shall work out a
69 pro-rata agreement for continuation of the present
70 occupancy of any buildings transferred that are occupied
71 by the department of natural resources personnel, other
72 than personnel of the forestry division and for any buildings
73 that are not transferred, but which are partially occupied
74 by personnel of the forestry division.

75 The state forester shall immediately after the transfer of
76 the division of forestry establish a system to divide the
77 forests being transferred to the department of agriculture
78 for management from the cabins, lodges and improved
79 recreational facilities which shall remain with the parks
80 division of the department of commerce.

81 In establishing the division lines, the commissioner and
82 the state forester shall cooperate fully to ensure that
83 management of improved property essential to the parks
84 division is not transferred.

85 In the event of disagreement over the placement of a
86 division line or dual occupancy of a building, the
87 disposition shall be decided by the Legislature's joint
88 committee on government and finance at a regularly
89 scheduled meeting. The transfer of management shall
90 include a transfer of all appurtenances, equipment
91 products, inventories and forest facilities.

92 All personnel employed in the division of forestry within
93 the department of natural resources and whose
94 employment is being transferred to the department of
95 agriculture shall retain their coverage under the civil
96 service commission and civil service system, and all matters
97 relating to job classification, job tenure, salary and
98 conditions of employment shall remain in force and effect
99 from and after the effective date of this article.

100 The chief of the division of forestry in the department of
101 natural resources on the effective date of transfer to the
102 department of agriculture shall continue as, and thereafter
103 be designated as, the state forester and retain civil service
104 system coverage with such duties and responsibilities as
105 may be assigned by the director.

**§19-1A-4. Additional duties of the director of the division of
forestry generally.**

1 The division director shall encourage and assist in the
2 location of new and expansion of existing wood products
3 business and industry; stimulate and assist in the expansion
4 of the forest industry; cooperate and act in conjunction with
5 other organizations, public or private, the objects of which
6 are the promotion and advancement of the wood products
7 industry in this state. The division shall arrange for or
8 conduct research in forest utilization and the marketing of
9 forest products, affecting the industrial and commercial
10 development of the state; shall correlate and interchange
11 information and disseminate the results of such research;
12 and shall, to the extent considered necessary, provide for or
13 conduct additional research projects or pilot plant
14 demonstrations of research results by cooperating with all
15 appropriate existing educational, public and industrial
16 institutions or agencies of the state.

17 The division director may exercise all powers necessary
18 or appropriate to carry out and effectuate the purposes of
19 this section, including the following powers, in addition to
20 others herein granted:

21 (a) To cooperate with industrial development agencies
22 in their efforts to promote the expansion of forest resources;
23 and

24 (b) To pursue research and education related to forest
25 resources and their multiple use, including conservation,
26 management and utilization, evaluation of forest land use
27 and the maintenance of the rural environment; the
28 manufacture and marketing of forest products, the
29 protection of recreation and aesthetic values, and the
30 organization of technical advisory committees to assist in
31 all or any of these or any aspect of forestry.

32 The director shall study ways and shall advise the

33 governor and the Legislature on all aspects of what is
34 needed to:

35 (1) Improve the business climate for forest industries
36 and the general awareness of forestry potential;

37 (2) Develop a strong state forestry agency;

38 (3) Improve forest resources data;

39 (4) Improve the transportation system for wood
40 products; and

41 (5) Improve forestry knowledge and practices of private
42 landowners.

43 (c) To accept and use gifts, donations or contributions
44 from individuals, associations, corporations and to acquire
45 by gift, lease or purchase real estate for purposes within the
46 powers and duties of the division.

47 (d) To promulgate rules and regulations, subject to the
48 provisions of chapter twenty-nine-a of this code, for the
49 management of state forests and to implement the programs
50 and policies of this article.

**§19-1A-5. Forestry commission; qualifications and
appointment of director, powers and duties
generally; appointment of director by governor.**

1 There is hereby created in the division of forestry in the
2 department of agriculture a forestry commission composed
3 of three members who are the commissioner of agriculture,
4 the commissioner of commerce and the director of the
5 department of natural resources. The commissioner of
6 agriculture shall be the chairman of the commission. No
7 business shall be transacted by the commission in the
8 absence of a quorum which consists of two members
9 including the chairman. The forestry commission shall hold
10 meetings quarterly or at the call of the chairman. The
11 commission shall appoint the director of the division of
12 forestry. In the event that the commission cannot agree
13 upon the appointment of a director within sixty days of any
14 vacancy therein, the appointment shall be made by the
15 governor within sixty days thereafter, but by with the
16 advice and consent of the Senate, in either event. The salary
17 of the director shall be forty-five thousand dollars a year.
18 The director shall be a graduate of a school of forestry
19 accredited by the Society of American Foresters or have a

20 minimum of ten years experience in forest management and
21 shall serve at the will and pleasure of the forestry
22 commission. The commission serves as an advisory board
23 for the director and shall approve the division budget
24 before it is submitted to the department of finance and
25 administration by the department.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-9. Fiscal management.

1 Subject to any controlling rules and regulations of the
2 department of finance and administration relating to state
3 fiscal management policies and practices, the director shall
4 establish in the department an adequate budget, finance
5 and accounting system which will currently and accurately
6 reflect the fiscal operations and conditions of the
7 department at all times. The department's accounting and
8 auditing services shall be on a fiscal-year basis.

9 The director shall select and designate a competent and
10 qualified person as department fiscal officer who, under the
11 supervision of the director, shall be responsible for all
12 budget, finance and accounting services of the department.
13 All moneys received by the department shall be recorded
14 and shall be paid as special revenue to the department of
15 natural resources, as provided in subdivision (i), section
16 two, article two, chapter twelve of this code, except in cases
17 wherein certain receipts of the department are by specific
18 provisions of this chapter required to be paid into some
19 special fund or funds.

§20-1-14. Divisions within department.

1 Divisions of game and fish, of forestry, of water resources,
2 of law enforcement and of reclamation are hereby created
3 and established within the department. Subject to
4 provisions of law, the director shall allocate the functions
5 and services of the department to the divisions, offices and
6 activities thereof and may from time to time establish and
7 abolish other divisions, offices and activities within the
8 department in order to carry out fully and in an orderly
9 manner the powers, duties and responsibilities of his office

10 as director. The director shall select and designate a
11 competent and qualified person to be chief of each division.
12 The chief shall be the principal administrative officer of his
13 division and shall be accountable and responsible for the
14 orderly and efficient performance of the duties, functions
15 and services thereof.

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING.**

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

**§20-7-1. Chief conservation officer; conservation officers;
special and emergency conservation officers;
subsistence allowance; expenses.**

1 The department's law-enforcement policies, practices
2 and programs shall be under the immediate supervision and
3 direction of the department law-enforcement officer
4 selected by the director and designated as chief
5 conservation officer as provided in article one hereof.

6 Under the supervision of the director, the chief
7 conservation officer shall organize, develop and maintain
8 law-enforcement practices, means and methods geared,
9 timed and adjustable to seasonal, emergency and other
10 needs and requirements of the department's comprehensive
11 natural resources program. All department personnel
12 detailed and assigned to law-enforcement duties and
13 services hereunder shall be known and designated as
14 conservation officers and shall be under the immediate
15 supervision and direction of the chief conservation officer.
16 All such conservation officers shall be trained, equipped
17 and conditioned for duty and services wherever and
18 whenever required by department law-enforcement needs.

19 The chief conservation officer, acting under supervision
20 of the director, is authorized to select and appoint
21 emergency conservation officers for a limited period of time
22 for effective enforcement of the provisions of this chapter
23 when considered necessary because of emergency or other
24 unusual circumstances. The emergency conservation
25 officers shall be selected from qualified civil service
26 personnel of the department, except in emergency
27 situations and circumstances when the director may
28 designate such officers, without regard to such

29 requirements and qualifications, to meet law-enforcement
30 needs. Emergency conservation officers shall exercise all
31 powers and duties prescribed in section four of this article
32 for full-time salaried conservation officers except the
33 provisions of subdivision (8).

34 The chief conservation officer, acting under supervision
35 of the director, is also authorized to select and appoint as
36 special conservation officers any full-time civil service
37 employee who is assigned to, and has direct responsibility
38 for management of, an area owned, leased or under the
39 control of the department and who has satisfactorily
40 completed a course of training established and
41 administered by the chief conservation officer, when such
42 action is deemed necessary because of law-enforcement
43 needs. The powers and duties of a special conservation
44 officer, appointed under this provision, shall be the same
45 within his assigned area as prescribed for full-time salaried
46 conservation officers. The jurisdiction of such person
47 appointed as a special conservation officer, under this
48 provision, shall be limited to the department area or areas
49 to which he is assigned and directly manages.

50 The chief conservation officer, acting under supervision
51 of the director, is also authorized to appoint as special
52 conservation officers any full-time civil service forest fire
53 control personnel who have satisfactorily completed a
54 course of training established and administered by the chief
55 conservation officer. The jurisdiction of forest fire control
56 personnel appointed as special conservation officers shall
57 be limited to the enforcement of the provisions of article
58 three of this chapter.

59 The chief conservation officer, with the approval of the
60 director, shall have the power and authority to revoke any
61 such appointment of an emergency conservation officer or
62 of a special conservation officer at any time.

63 Conservation officers shall be subject to seasonal or other
64 assignment and detail to duty whenever and wherever
65 required by the functions, services and needs of the
66 department.

67 The chief conservation officer shall designate the area of
68 primary residence of each conservation officer, including
69 himself. Since the area of business activity of the
70 department is actually anywhere within the territorial

71 confines of the state of West Virginia, actual expenses
72 incurred shall be paid whenever the duties are performed
73 outside the area of primary assignment and still within the
74 state.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate
4 to carry out the purposes of this article, including the
5 power:

6 (a) To cooperate with industrial development agencies
7 in efforts to promote the expansion of industrial,
8 commercial, manufacturing and tourist activity in this
9 state.

10 (b) To determine, upon the proper application of an
11 industrial development agency, whether the declared
12 public purposes of this article have been or will be
13 accomplished by the establishment by such agency of an
14 industrial development project in this state.

15 (c) To conduct examinations and investigations and to
16 hear testimony and take proof, under oath or affirmation, at
17 public or private hearings, on any matter relevant to this
18 article and necessary for information on the establishment
19 of any industrial development project.

20 (d) To issue subpoenas requiring the attendance of
21 witnesses and the production of books and papers relevant
22 to any hearing before such authority or one or more
23 members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such
25 offense to have punished for contempt any witness who
26 refuses to obey a subpoena, to be sworn or affirmed or to
27 testify or who commits any contempt after being summoned
28 to appear.

29 (f) To authorize any member of the authority to conduct
30 hearings, administer oaths, take affidavits and issue
31 subpoenas.

32 (g) To make, upon proper application of any industrial

33 development agency, loans to such agency for industrial
34 development projects, industrial subdivision projects and
35 industrial subdivision project improvements and to provide
36 for the repayment and redeposit of such loans in the manner
37 provided in this article.

38 (h) To sue and be sued, implead and be impleaded, and
39 complain and defend in any court.

40 (i) To adopt, use and alter at will a corporate seal.

41 (j) To make bylaws for the management and regulation
42 of its affairs.

43 (k) To appoint officers, agents, employees and servants.

44 (l) To make contracts of every kind and nature to
45 execute all instruments necessary or convenient for
46 carrying on its business.

47 (m) Without in any way limiting any other subdivision
48 of this section, to accept grants from and enter into
49 contracts and other transactions with any federal agency.

50 (n) To take title by foreclosure to any industrial
51 development project or any industrial subdivision project
52 where acquisition is necessary to protect any loan
53 previously made by the authority and to sell, transfer and
54 convey such project to any responsible buyer. In the event
55 such sale, transfer and conveyance cannot be effected with
56 reasonable promptness, the authority may, in order to
57 minimize financial losses and sustain employment, lease
58 the project to a responsible tenant. The authority shall not
59 lease an industrial development project or industrial
60 subdivision project, except under the conditions and for the
61 purposes cited in this section.

62 (o) To participate in any reorganization proceeding
63 pending pursuant to the United States Code (being the act
64 of Congress establishing a uniform system of bankruptcy
65 throughout the United States, as amended) or in any
66 receivership proceeding in a state or federal court for the
67 reorganization or liquidation of a responsible buyer or
68 responsible tenant. The authority may file its claim against
69 any such responsible buyer or responsible tenant in any of
70 the foregoing proceedings, vote upon any question pending
71 therein which requires the approval of the creditors
72 participating in any reorganization proceeding or
73 receivership, exchange any evidence of such indebtedness
74 for any property, security or evidence of indebtedness

75 offered as a part of the reorganization of such responsible
76 buyer or responsible tenant or of any other entity formed to
77 acquire the assets thereof and may compromise or reduce
78 the amount of any indebtedness owing to it as a part of any
79 such reorganization.

80 (p) To borrow money and to issue its negotiable bonds,
81 security interests or notes and to provide for and secure the
82 payment thereof, and to provide for the rights of the holders
83 thereof, and to purchase, hold and dispose of any of its
84 bonds, security interests or notes.

85 (q) To sell, at public or private sale, any bond or other
86 negotiable instrument, security interests or obligation of
87 the authority in such manner and upon such terms as the
88 authority deems would best serve the purposes of this
89 article.

90 (r) To issue its bonds, security interests and notes
91 payable solely from the revenue or funds available to the
92 authority therefor; and the authority may issue its bonds,
93 security interests or notes in such principal amounts as it
94 shall deem necessary to provide funds for any purposes
95 under this article, including:

96 (i) The making of loans to be approved industrial
97 development agencies.

98 (ii) The payment, funding or refunding of the principal
99 of, interest on, or redemption premiums on, any bonds,
100 security interests or notes issued by it whether the bonds,
101 security interests, notes or interest to be funded or refunded
102 have or have not become due.

103 (iii) The establishment or increase of reserves to secure
104 or to pay bonds, security interests, notes or the interest
105 thereon and all other costs or expenses of the authority
106 incident to and necessary or convenient to carry out its
107 corporate purposes and powers. Any bonds, security
108 interests or notes may be additionally secured by a pledge of
109 any revenues, funds, assets or moneys of the authority from
110 any source whatsoever.

111 (s) To issue renewal notes, or security interests, to issue
112 bonds to pay notes or security interests and, whenever it
113 deems refunding expedient, to refund any bonds by the
114 issuance of new bonds, whether the bonds to be refunded
115 have or have not matured except that no such renewal notes
116 shall be issued to mature more than ten years from date of

117 issuance of the notes renewed and no such refunding bonds
118 shall be issued to mature more than twenty-five years from
119 the date of issuance.

120 (t) To apply the proceeds from the sale of renewal notes,
121 security interests or refunding bonds to the purchase,
122 redemption or payment of the notes, security interests or
123 bonds to be refunded.

124 (u) To accept gifts or grants of property, funds, security
125 interests, money, materials, labor, supplies or services from
126 the United States of America or from any governmental
127 unit or any person, firm or corporation, and to carry out the
128 terms or provisions, of or make agreements with respect to,
129 or pledge, any gifts or grants, and to do any and all things
130 necessary, useful, desirable or convenient in connection
131 with the procuring, acceptance or disposition of gifts or
132 grants.

133 (v) To the extent permitted under its contracts with the
134 holders of bonds, security interests or notes of the authority,
135 to consent to any modification of the rate of interest, time of
136 payment of any installment of principal or interest, security
137 or any other term of any bond, security interests, note or
138 contract or agreement of any kind to which the authority is
139 a party.

140 (w) To sell security interests in the loan portfolio of the
141 authority. Such security interests shall be evidenced by
142 instruments issued by the authority. Proceeds from the sale
143 of security interests may be issued in the same manner and
144 for the same purposes as bond and note revenues.

145 (x) To procure insurance against any losses in
146 connection with its property, operations or assets in such
147 amounts and from such insurers as the authority deems
148 desirable.

149 (y) To take and hold security interests for equipment
150 loans as prescribed in this article.

151 (z) To make, upon proper application, loans for the
152 purposes and under the conditions provided in this article,
153 for electrical power generating facilities, natural gas
154 transmission lines, coal processing plants, other energy
155 projects, export development, farm development, job
156 development, forest development, and for automobile
157 assistance corporation projects, and the industrial and
158 trade jobs development corporation projects, and to

159 provide for the repayment and redeposit of such loans in the
160 manner provided in this article: *Provided*, That no bonds
161 shall be issued for the constructing of electrical power
162 generating facilities, natural gas transmission lines or other
163 energy projects unless the same shall be specifically
164 provided for by an act of general law, after public notice
165 and public hearing.

166 (aa) To take title by foreclosure to any project, plant,
167 property or equipment where acquisition is necessary to
168 protect any loan previously made by the authority and to
169 sell, transfer and convey such project, plant, property or
170 equipment to any responsible buyer. In the event such sale,
171 transfer and conveyance cannot be effected with reasonable
172 promptness, the authority may, in order to minimize
173 financial losses and sustain employment, lease a project to a
174 responsible tenant.

175 (bb) To borrow money for its purpose and issue bonds or
176 notes for the money and provide for the rights of the holders
177 of the bonds or notes, and to secure the bonds or notes by a
178 deed of trust on, or an assignment or pledge of, any or all of
179 its property and property of the project, including any part
180 of the security for the project loans, and the authority may
181 issue its bonds and notes in such principal amounts as it
182 shall deem necessary to provide funds for any purposes
183 under this article, including the making of loans for the
184 purposes set forth in subsection (z) of this section.

**§31-15-7b. Loans for construction of electrical power
generating facilities, natural gas transmission
lines, coal processing plants, other energy
projects; and export development, farm
development, job development, forest
development and projects.**

1 (a) At the request of the governor or the appropriate
2 state agency or authority, the authority may lend money to
3 such office, agency or authority for the acquisition,
4 construction, improvement or alteration of projects for
5 electrical power generating facilities, natural gas
6 transmission lines, coal processing plants and other energy
7 projects.

8 (b) At the request of the department of commerce or the
9 office of community and industrial development, the

10 authority may lend money to any person or entity for the
11 acquisition, construction, improvement or alteration of any
12 project relative to export development, farm development,
13 job development and forest development.

14 (c) At the request of the West Virginia automobile
15 assistance corporation, the authority may lend money to
16 any person or entity for the acquisition, construction,
17 improvement or alteration of any project relative thereto.

18 (d) At the request of the West Virginia industrial and
19 trade jobs development corporation, the authority may lend
20 money to any person or entity for the acquisition,
21 construction, improvement or alteration of any project
22 relative thereto.

23 (e) A loan shall not be made unless the authority is
24 reasonably satisfied that the project will produce revenues
25 sufficient, together with any other revenues pledged, to
26 meet the principal and interest on the loan, other costs,
27 expenses and charges in connection with the loan and other
28 charges or obligations of the project which may be prior or
29 equal to the loan, promptly as they become due; that the
30 project is otherwise soundly financed; that the loan
31 application requirements of section eight of this article
32 have been satisfied; that the project will be owned and
33 operated by the state of West Virginia. A loan made
34 pursuant to this subsection shall not exceed the project
35 costs as determined by the authority. A loan shall be
36 secured in the manner required by the authority, shall be
37 repaid in a period and bear interest at a rate as determined
38 by the authority, which interest rate may be decreased or
39 increased so that it shall in no event be less than the rate
40 paid by the authority on notes, renewal notes or bonds
41 issued to fund the loan, and shall have such terms and
42 conditions as are required by the authority, all which shall
43 be set forth in a loan agreement and related documents as
44 required by the authority.

§31-15-7c. Bonds and notes issued pursuant to section seven-b.

1 The following provisions apply to loans made pursuant to
2 section seven-b of this article:

3 (a) The authority periodically may issue its negotiable
4 bonds and notes in a principal amount which, in the opinion
5 of the authority, shall be necessary to provide sufficient

6 funds for the making of loans provided for in section seven-
7 b of this article, including temporary loans during the
8 construction of such projects, for the payment of interest on
9 bonds and notes of the authority during construction of
10 such projects and for a reasonable time thereafter and for
11 the establishment of reserves to secure those bonds and
12 notes.

13 (b) No bonds shall be issued for any projects for an
14 electrical power generating facility, a natural gas
15 transmission line or other energy project unless the same
16 shall be specifically provided for by an act of general law.

17 (c) The authority periodically may issue renewal notes,
18 may issue bonds to pay notes and, if it considers refunding
19 expedient, to refund or to refund in advance, bonds or notes
20 issued by the authority by the issuance of new bonds.

21 (d) Except as may otherwise be expressly provided by
22 the authority, every issue of its notes or bonds shall be
23 special obligations of the authority, payable solely from the
24 property, revenues or other sources of or available to the
25 authority pledged therefor.

26 (e) The bonds and the notes shall be authorized by
27 resolution of the authority, shall bear such date and shall
28 mature at such time or times, as such resolution may
29 provide. The bonds and notes shall bear interest at such rate
30 or rates, be in such denominations, be in such form, either
31 coupon or registered, carry such registration privileges, be
32 payable in such medium of payment and at such place or
33 places and be subject to such terms of redemption as the
34 authority may authorize. The bonds and notes of the
35 authority may be sold by the authority, at public or private
36 sale, at or not less than the price the authority determines.
37 The bonds and notes shall be executed by the chairman and
38 vice chairman of the board, both of whom may use facsimile
39 signatures. The official seal of the authority or a facsimile
40 thereof shall be affixed to or printed on each bond and note
41 and attested, manually or by facsimile signature, by the
42 secretary-treasurer of the board, and any coupons attached
43 to any bond or note shall bear the signature or facsimile
44 signature of the chairman of the board. In case any officer
45 whose signature, or a facsimile of whose signature, appears
46 on any bonds, notes or coupons ceases to be such officer
47 before delivery of such bonds or notes, such signature or

48 facsimile is nevertheless sufficient for all purposes the same
49 as if he had remained in office until such delivery; and, in
50 case the seal of the authority has been changed after a
51 facsimile has been imprinted on such bonds or notes, such
52 facsimile seal will continue to be sufficient for all purposes.

53 A resolution authorizing bonds or notes or an issue of
54 bonds or notes under this article may contain provisions,
55 which shall be a part of the contract with the holders of the
56 bonds or notes, as to any or all of the following:

57 (1) Pledging and creating a lien on all or any part of the
58 fees and charges made or received or to be received by the
59 authority, all or any part of the moneys received in payment
60 of project loans and interest on project loans and all or any
61 part of other moneys received or to be received, to secure the
62 payment of the bonds or notes or of any issue of bonds or
63 notes, subject to those agreements with bondholders or
64 noteholders which then exist;

65 (2) Pledging and creating a lien on all or any part of the
66 assets of the authority, including notes, deeds of trust and
67 obligations securing the assets, to secure the payment of the
68 bonds or notes or of any issue of bonds or notes, subject to
69 those agreements with bondholders or noteholders which
70 then exist;

71 (3) Pledging and creating a lien on any loan, grant or
72 contribution to be received from the federal, state or local
73 government or other source;

74 (4) The use and disposition of the income from project
75 loans owned by the authority and payment of the principal
76 of and interest on project loans owned by the authority;

77 (5) The setting aside of reserves or sinking funds and the
78 regulation and disposition thereof;

79 (6) Limitations on the purpose to which the proceeds of
80 sale of bonds or notes may be applied and pledging the
81 proceeds to secure the payment of the bonds or notes or of
82 any issue of the bonds or notes;

83 (7) Limitations on the issuance of additional bonds or
84 notes and the terms upon which additional bonds or notes
85 may be issued and secured;

86 (8) The procedure by which the terms of a contract with

87 the bondholders or noteholders may be amended or
88 abrogated, the amount of bonds or notes the holders of
89 which must consent thereto and the manner in which the
90 consent may be given; and
91 (9) Vesting in a trustee or trustees the property, rights,
92 powers, remedies and duties which the authority considers
93 necessary or convenient.

§31-15-7d. Trustee for bondholders; contents of trust agreement; relating to bonds issued pursuant to section seven-c of this article.

1 For bonds issued pursuant to the provisions of section
2 seven-c of this article, in the discretion of the authority, any
3 bonds, including refunding bonds or notes issued by the
4 authority, may be secured by a trust agreement between the
5 authority and a corporate trustee, which trustee may be any
6 trust company within or without the state. Any such trust
7 agreement may contain provisions as set forth in section
8 seven-c of this article with respect to resolution. All
9 expenses incurred in carrying out the provisions of any
10 trust agreement may be treated as a part of the costs of the
11 operation of the project loan program provided for
12 hereunder. Any such trust agreement, indenture or
13 resolution authorizing the issuance of bonds or notes may
14 provide the method whereby the general administrative
15 overhead expenses of the authority shall be allocated
16 among the several projects for which project loans have
17 been made.

§31-15-7e. Use of funds by authority; restrictions thereon; relating to projects under section seven-b of this article.

1 For projects described in and loans made pursuant to
2 section seven-b of this article, and bonds and notes issued
3 pursuant to section seven-c thereof:
4 All moneys, properties and assets acquired by the
5 authority, whether as proceeds from the sale of bonds or
6 notes or as revenues or otherwise, shall be held by it in trust
7 for the purposes of carrying out its powers and duties and
8 shall be used and reused in accordance with the purposes
9 and provisions of this article. Such moneys shall at no time
10 be commingled with other public funds. Such moneys,

11 except as otherwise provided in any resolution authorizing
12 the issuance of bonds or notes or in any trust agreement
13 securing the same, or except when invested pursuant to this
14 article, shall be kept in appropriate depositories and
15 secured as provided and required by law. The resolution
16 authorizing the issuance of such bonds or notes of any issue
17 or the trust agreement securing such bonds or notes shall
18 provide that any officer to whom, or any banking
19 institution or trust company to which, such moneys are
20 paid, shall act as trustee of such moneys and hold and apply
21 them for the purposes hereof, subject to the conditions this
22 article and such resolution or trust agreement provide.

§31-15-7f. Security for bonds and notes issued pursuant to section seven-c of this article.

1 A resolution authorizing the issuance of bonds or notes
2 under section seven-c of this article may provide that the
3 principal of and interest on the bonds or notes issued shall
4 be secured by a lien on any or all of the fees and charges
5 made or received, or to be received, by the authority from
6 the project in connection with the project loan, on any or all
7 of the money received in payment of the project loan and
8 interest thereon, on any or all of investment earnings or
9 profits on any of these sources or on any or all of the security
10 held for that payment, and on other funds or assets of the
11 authority or of any other agency, person or entity pledged
12 for such purpose.

§31-15-7g. Enforcement of payment and validity of bonds and notes issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to section seven-c of
2 this article:
3 (a) The provisions of this article and any resolution,
4 indenture, deed of trust or security agreement shall
5 continue in effect until the principal of and interest on the
6 bonds or notes of the authority have been fully paid, and the
7 duties of the authority under this article and any resolution,
8 indenture, deed of trust or security agreement shall be
9 enforceable by any bondholder or noteholder by
10 mandamus, trustee's sale under the deed of trust or other
11 appropriate action in any court of competent jurisdiction.

12 (b) The resolution authorizing the bonds or notes shall
13 provide that such bonds or notes shall contain a recital that
14 they are issued pursuant to this article, which recital shall
15 be conclusive evidence of their validity and of the regularity
16 of their issuance.

§31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to section seven-c of
2 this article, any pledge made by the authority shall be valid
3 and binding from the time the pledge is made. The money or
4 property so pledged and thereafter received by the
5 authority shall immediately be subject to the lien of the
6 pledge without any physical delivery thereof or further act.
7 The lien of any such pledge shall be valid and binding as
8 against all parties having claims of any kind in tort,
9 contract or otherwise against the authority, irrespective of
10 whether such parties have notice thereof.

§31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this article.

1 Any bonds issued pursuant to the provisions of section
2 seven-c of this article and at any time outstanding may at
3 anytime and from time to time be refunded by the authority
4 by the issuance of its refunding bonds in such amount as it
5 may deem necessary to refund the principal of the bonds so
6 to be refunded, together with any unpaid interest thereon;
7 to provide additional funds for the purposes of the
8 authority; and to pay any premiums and commissions
9 necessary to be paid in connection therewith. Any such
10 refunding may be effected whether the bonds to be
11 refunded shall have then matured or shall thereafter
12 mature, either by sale of the refunding bonds and the
13 application of the proceeds thereof for the redemption of
14 the bonds to be refunded thereby or by exchange of the
15 refunding bonds for the bonds to be refunded thereby:
16 *Provided*, That the holders of any bonds so to be refunded
17 shall not be compelled without their consent to surrender
18 their bonds for payment or exchange prior to the date on
19 which they are payable or, if they are called for redemption,
20 prior to the date on which they are by their terms subject to
21 redemption. Any refunding bonds issued under the

22 authority of this article shall be payable from the revenues
23 out of which the bonds to be refunded thereby were
24 payable, from other moneys or from the principal of and
25 interest on or other investment yield from investments or
26 proceeds of bonds or other applicable funds and moneys,
27 including investments of proceeds of any refunding bonds,
28 shall be subject to the provisions contained in section
29 seven-c of this article and shall be secured in accordance
30 with the provisions of sections seven-c and seven-d of this
31 article.

§31-15-7j. Purchase and cancellation of notes or bonds issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to the provisions of
2 section seven-c of this article:

3 The authority, subject to such agreements with
4 noteholders or bondholders as may then exist, shall have
5 power, out of any funds available therefor, to purchase
6 bonds, including refunding bonds, or notes of the authority.

7 If the bonds or notes are then redeemable, the price of
8 such purchase shall not exceed the redemption price then
9 applicable plus accrued interest to the next interest
10 payment date thereon. If the bonds or notes are not then
11 redeemable, the price of such purchase shall not exceed the
12 redemption price applicable on the first date after such
13 purchase upon which the bonds or notes become subject to
14 redemptions plus accrued interest to such date. Upon such
15 purchase, such bonds or notes shall be cancelled.

§31-15-7k. Vested rights; impairment; bonds issued pursuant to section seven-c of this article.

1 The state pledges and agrees with the holders of any
2 bonds or notes issued under the provisions of section seven-
3 c of this article that the state will not limit or alter the rights
4 vested in the authority to fulfill the terms of any agreements
5 made with the holders thereof, or in any way impair the
6 rights and remedies of the holders until the bonds or notes,
7 together with the interest thereon, and all costs and
8 expenses in connection with any action or proceeding by or
9 on behalf of such holders, are fully met and discharged. The
10 authority is authorized to include this pledge and
11 agreement of the state in any agreement with the holders of
12 such bonds or notes.

§31-15-7m. Bonds and notes issued pursuant to section seven-c of this article not debt of state, county, municipality or any political subdivision; exceptions; expenses incurred pursuant to article.

1 Bonds, including refunding bonds, and notes issued
2 under the authority of section seven-c of this article and any
3 coupons in connection therewith shall not constitute a debt
4 or a pledge of the faith and credit or taxing power of this
5 state or of any county, municipality or any other political
6 subdivision of this state, and the holders and owners thereof
7 shall have no right to have taxes levied by the legislature or
8 the taxing authority of any county, municipality or any
9 other political subdivision of this state for the payment of
10 the principal thereof or interest thereon, but such bonds
11 and notes shall be payable solely from the revenues and
12 funds pledged for their payment as authorized by this
13 article unless the notes are issued in anticipation of the
14 issuance of bonds or the bonds are refunded by refunding
15 bonds issued under the authority of this article, which
16 bonds or refunding bonds shall be payable solely from
17 revenues and funds pledged for their payment as authorized
18 by this article. All such bonds and notes shall contain on the
19 face thereof a statement to the effect that the bonds or notes
20 as to both principal and interest, are not debts of the state or
21 any county, municipality or political subdivision thereof,
22 but are payable solely from revenues and funds pledged for
23 their payment.

24 Such bonds and notes shall be the debts of any state
25 agency, office or authority specifically agreeing thereto.

26 All expenses incurred in carrying out the provisions of
27 this article shall be payable solely from funds provided
28 under the authority of this article. Such article does not
29 authorize the authority to incur indebtedness or liability on
30 behalf of or payable by the state or any county, municipality
31 or any other political subdivision thereof.

§31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-c of this article.

1 Whether or not the bonds or notes issued pursuant to the
2 provisions of section seven-c of this article are of such form
3 or character as to be negotiable instruments under the

4 Uniform Commercial Code, such bonds or notes are
5 negotiable instruments within the meaning of and for all
6 the purposes of the Uniform Commercial Code, subject only
7 to the provisions of the bonds or notes for registration.

**§31-15-7o. Bonds and notes issued pursuant to section seven-c
of this article; legal investments.**

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 the bonds and notes issued pursuant to the provisions of
4 section seven-c of this article are securities in which all
5 public officers and bodies of this state, including the West
6 Virginia state board of investments, all municipalities and
7 other political subdivisions of this state, all insurance
8 companies and associations and other persons carrying on
9 an insurance business, including domestic for life and
10 domestic not for life insurance companies, all banks, trust
11 companies, societies for savings, building and loan
12 associations, savings and loan associations, deposit
13 guarantee associations and investment companies, all
14 administrators, guardians, executors, trustees and other
15 fiduciaries and all other persons whatsoever who are
16 authorized to invest in bonds or other obligations of the
17 state may properly and legally invest funds, including
18 capital, in their control or belonging to them.

**§31-15-7p. Exemption from taxation; bonds issued pursuant to
the provisions of section seven-c of this article.**

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state for the improvement of their health, safety,
4 convenience and welfare and is a public purpose. As the
5 operation and maintenance of projects described in section
6 seven-b of this article will constitute the performance of
7 essential governmental functions, the authority shall not be
8 required to pay any taxes or assessments upon any property
9 acquired or used by the authority or upon the income
10 therefrom. All bonds and notes of the authority, and all
11 interest and income thereon, shall be exempt from all
12 taxation by this state and any county, municipality,
13 political subdivision or agency thereof, except inheritance
14 taxes.

15 All bonds and notes of the authority issued pursuant to
16 the provisions of section seven-c of this article, and all
17 interest and income thereon, shall be exempt from all
18 taxation by this state and any county, municipality,
19 political subdivision or agency thereof, except inheritance
20 taxes.

**§31-15-7q. Personal liability; persons executing bonds or notes
issued pursuant to section seven-c of this article.**

1 Neither the members or officers of the authority or of any
2 authority agency or office, nor any person executing the
3 bonds or notes issued pursuant to the provisions of section
4 seven-c of this article, shall be liable personally on such
5 bonds or notes or be subject to any personal liability or
6 accountability by reason of the insurance thereof.

**§31-15-7r. Cumulative authority as to powers conferred;
applicability of other statutes and charters;
bonds issued pursuant to section seven-c of this
article.**

1 The provisions of this article relating to the issuance of
2 loans made pursuant to the provisions of section seven-b of
3 this article, and bonds issued pursuant to the provisions of
4 section seven-c of this article shall be construed as granting
5 cumulative authority for the exercise of the various powers
6 herein conferred, and neither the powers nor any bonds or
7 notes issued hereunder shall be affected or limited by any
8 other statutory or charter provision now or hereafter in
9 force, other than as may be provided in this article, it being
10 the purpose and intention of this article to create full,
11 separate and complete additional powers. The various
12 powers conferred herein may be exercised independently
13 and notwithstanding that no bonds or notes are issued
14 hereunder.

§31-15-9. Equipment loans.

1 The authority may make loans for equipment as part of
2 industrial development projects, industrial subdivision
3 projects, and projects for electrical power generating
4 facilities, natural gas transmission lines, coal processing
5 plants, other energy projects, export development, farm
6 development, job development, forest development,

7 automobile assistance corporation projects and industrial
8 and trade jobs development corporation projects, and
9 improvements thereto, subject to the same application,
10 loan, and bond procedures and provisions as usually apply
11 to loans issued under the provisions of this article, or by an
12 unconditional letter of credit approved by the authority.
13 The real property in which a security interest is taken may
14 be the real property upon which the equipment is situate or
15 real property at a different location from the location of the
16 equipment. Such additional security shall be upon such
17 terms and in such amount satisfactory to the authority.

§31-15-21. Authorized limit on borrowing.

1 The aggregate principal amount of notes, security
2 interests and bonds issued by the authority shall not exceed
3 three hundred million dollars outstanding at any one time:
4 *Provided*, That in computing the total amount of notes,
5 security interests and bonds which may at any one time be
6 outstanding, the principal amount of any outstanding
7 notes, security interests and bonds refunded or to be
8 refunded either by application of the proceeds of the sale of
9 any refunding bonds, security interests or notes of the
10 authority or by exchange for any such refunding bonds,
11 security interests or notes shall be excluded. The provisions
12 of section nineteen of this article notwithstanding, the state
13 board of investments shall have invested no more than a
14 total aggregate principal amount of forty-five million
15 dollars at any one time in such notes, security interests or
16 bonds.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harold E. Brown
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Jedd C. Wilts
.....
Clerk of the Senate

Donald K. Hogg
.....
Clerk of the House of Delegates

Don Tankership
.....
President of the Senate

Joseph P. Allen, Jr.
.....
Speaker House of Delegates

The within *approved* this the *2nd*
May
day of, 1985.

Arch A. Moore, Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/55

Time 6:30 p.m.